



August 10, 2021

AvalonBay Communities Inc  
Attn: Carl Shorett  
10885 NE 4<sup>th</sup> St, #500  
Bellevue, WA 98004

**RE: Response to Herrera Comments on WRI Wetland Determination**

This letter provides a response to peer review comments prepared by Herrera on July 16, 2021, on the Wetland Resources, Inc. (WRI) Wetland Determination Report for the property located at 1040 12<sup>th</sup> Ave NW, Issaquah, Washington (subject property). Herrera agree that there are no wetlands located within the boundary of the subject property but requests additional information about streams and wetlands located off the subject property to the east and the ditch located along NW Newport Way. Herrera's comments are identified below in *italics* with the response in regular text.

*Figure 1 in the WRI report shows the subject property boundary but the figure does not show the distance of the property line to the offsite wetland. Based on field observations and a review of available information, the findings of the WRI report do not comply with IMC 18.10.640(C), IMC18.10.640(D), and IMC 18.10.410. If the regulatory buffers with the greatest extents are applied to the offsite wetland (up to 225 feet), it is possible that the wetland buffer and associated building setback will extend onto the subject property. There is no indication in the WRI report regarding an estimate of wetland rating or associated buffers. The property map included in the WRI report does not show approximate locations of off-site wetlands or streams and their associated estimated buffers. An estimated wetland rating and map of the approximate wetland location are needed to support a conclusion that wetland buffers and associated building setbacks do not extend onto the subject property.*

An additional site investigation was conducted along with an aerial photo and topographic analysis to approximate the off-site wetland and stream. These off-site features are depicted in relation to the boundary of the subject property on the attached map. In addition, the off-site wetland has been rated utilizing the Washington State Wetland Rating System for Western Washington - 2014 Update (Ecology Publication No. 14-06-029, October 2014) as required by ISD 18.10.620. The off-site wetland is rated as a Category III with a habitat score of 5 and is, therefore, designated a 75-foot protective buffer. See the attached Critical Area Determination map for the locations of off-site streams, wetlands, buffers, and setbacks.

Compliance with IMC 18.10.640(C)

The off-site wetland is a Category III with a habitat score of 5 and therefore is designated a 75-foot protective buffer. This buffer does not extend onto the subject property.

Compliance with IMC 18.10.640(D)

An additional 15-foot building setback shall be established from the outer edge of the required buffer. The required 15-foot building setback does not extend onto the subject property.

Compliance with IMC 18.10.410

A critical area study is required for a development proposal that will encroach into a critical area, is constructed adjacent to a critical area, or could have a probably adverse impact to a critical area, unless the Director waives the requirement for a critical area study. The development proposal for the subject property meets the requirements for a waiver. Those requirements are identified below in *italics* with the response in regular text.

1. *There will be no alteration of the critical areas or required buffers; and*

Given that the critical areas and required buffers are located entirely off the subject property, no alteration will occur.

2. *The development proposal will not affect the critical areas in a manner contrary to the goals, purposes, objectives, and requirements of this chapter; and*

Given that the critical areas do not extend into the subject property, the goals, purposes, objectives, and requirements of this chapter are met.

3. *The minimum standards required by this chapter are met;*

Given that the critical areas and all required buffers and setbacks do not extend into the subject property, all standards of this chapter are met.

*Based on the review of the historic channel relocation design in Attachment A, it is possible that the City's environmental protection regulations would apply to the drainage feature where it extends along the southern boundary of the subject property. If the City determined that the drainage feature was constructed to convey flows from a naturally occurring feature, then the City of Issaquah would likely classify the feature as a stream and environmentally critical areas regulations would apply.*

WRI researched and evaluated additional available resources and investigated the upstream basin to determine the source of hydrology entering the ditch located on the subject property. WRI concludes the drainage feature is properly classified as a ditch. These additional resources and associated findings include:

- City of Issaquah GIS Data Viewer (Attached as Exhibit 1)

This resource does not depict any natural source of water entering the storm drainage system upstream of the subject property or contributing flow to the ditch. A stream (natural flow) is shown crossing under Newport Way NW near the subject property's southeast corner. Based on the lidar background imaging and visual observations, the confluence of the ditch and stream

is approximately 200 feet further east than indicated by GIS data, meaning the stream and its associated buffers do not reach the subject property.

- King County iMap (Attached as Exhibit 2)

This resource does not depict any wetlands or streams within the contributing basin for the ditch. A wetland is identified west of 12<sup>th</sup> Ave NW, but based on topography, it drains west into Tibbets Creek rather than northeast into the subject property. No streams or natural drainage features contributing to the ditch are observable on the subject property in 1936 King County Aerial photo. The mapped stormwater system does not show any streams or wetlands contributing to the ditch.

- 1975 WDFW Catalog of Washington Streams and Salmon Utilization (Attached as Exhibit 3)

This resource does not depict any streams within the boundary of the subject property. Tibbets Creek is depicted west of the subject property, and a tributary stream is depicted to the east. Neither of these features are depicted as contributing water to the ditch.

- Issaquah Short Plat (8/05/93)(Attached as Exhibit 4)

This resource identifies the Drainage District #4 Pickering Lateral Easement on the face of the plan along with a note that states the ditch is to be vacated and moved to its current location. Note the reference is to a ditch and not a stream.

- King County Superior Court Decision – Condemnation for Drainage System (August 1916) (Attached as Exhibit 5)

This Superior Court decision orders the condemnation of land, including a portion of the subject property, for the construction of a drainage system consisting of a series of drainage ditches, which the court deemed “improvements” not natural features. The drainage feature on the property is one of the ditches established by the Superior Court decision.

- 12<sup>th</sup> And Newport Building – Phase 11 Channel Relocation, Vegetation and Trail Plan, The Watershed Company (10/26/86) (Attached as Exhibit 6)

This resource shows the relocation of the ditch into its current location and configuration. A stream is not referenced anywhere in the plan and the ditch is only referred to as a “channel.” Construction Note 1 references the need for an HPA for any “in channel work”, but again does not reference the feature as a stream. Based on the text type (not-hand lettered) this may be a standard construction note carried over from another plan sheet.

- Evergreen Ford and Lincoln SDP Appeal Decision (SDP19-00001) (Attached as Exhibit 7)

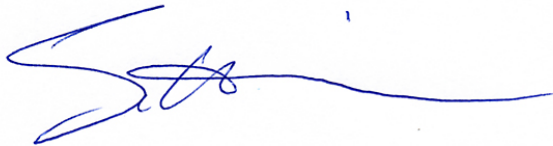
This decision reaffirms that the 1996 Issaquah Creek Final Basin and Nonpoint action plan is the legislatively adopted standard for distinguishing streams from other artificial water courses. It states:

IMC 18.10.390’s definition of “streams,” a landform feature included within the critical areas definition, explicitly excludes “excavated or other entirely artificial watercourses, including irrigation ditches, swales, roadside ditches, canals, storm or surface water runoff devices.” In turn, IMC 18.10.390 defines “ditch” as “[a] long, narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996).” Accordingly,

landform features appropriately classified as a ditch are not critical areas subject to critical areas regulations.

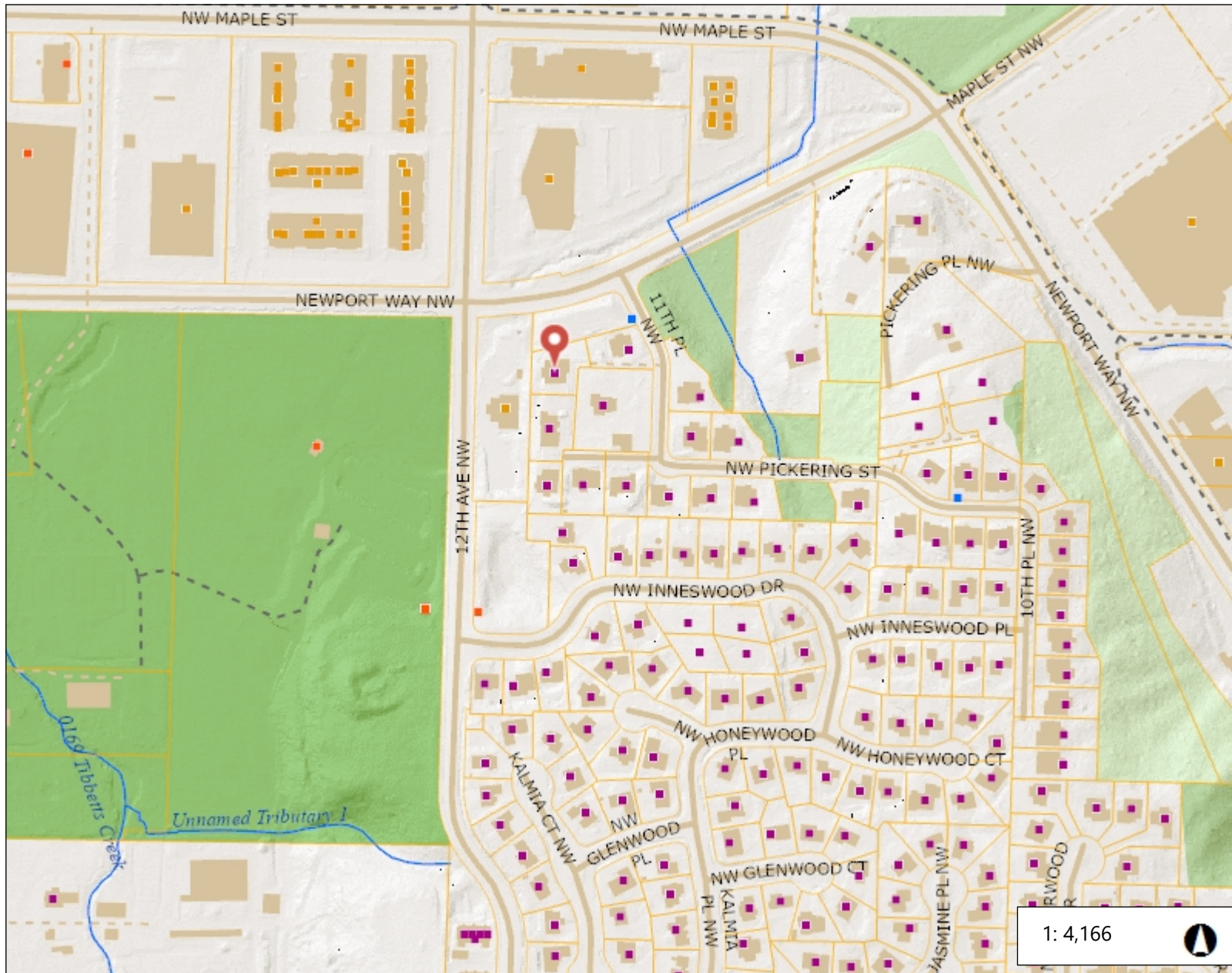
Based on the investigation of the contributing basin and exhaustive review of existing available information including decades-old (in one case century old) documents, the ditch on the subject property does not convey a relocated or natural stream system and is an excavated or other entirely artificial watercourses for the purpose of conveying surface water. Therefore, it does not meet the definition of stream. Furthermore, ditches are defined in the Issaquah Municipal Code as “*A long, narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996).*” IMC 18.10.390. The drainage feature on the subject property does not meet the definition of stream within IMC 18.10.390 and clearly meets the definition of ditch in IMC 18.10.390. Therefore, the ditch is not regulated under 18.10 Critical Area Regulations.

In conclusion, the development proposal will not disturb any critical areas or encroach onto any critical area buffers.



Scott Brainard, PWS  
*Principal Ecologist*





694.4 0 347.18 694.4 Feet

DISCLAIMER: These maps and other data are for informational purposes and have not been prepared for, nor are they suitable for legal, surveying, or engineering purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. The City of Issaquah makes no warranty or guarantee as to the content, accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained herein.

### Legend

- Site Addresses**
- RESIDENTIAL / MIXED USE
  - COMMERCIAL
  - GOVERNMENT / SCHOOLS
  - RECREATION-RELATED
  - IRRIGATION METER
  - VACANT / UNKNOWN

### Parcels

#### Site Addresses

#### Buildings

- BUILDING FOOTPRINT
- TEMPORARY PLACEHOLDER

#### Issaquah City Limits

#### Streets

- STREET
- HIGHWAY
- RAMP
- WALKWAY
- DRIVEWAY; ACCESS; RETAIL AC

#### Trails

#### Railroad

#### Water Bodies

#### Streams

#### Parks - Open Space - NGPE

- PARK
- PARK/OPEN SPACE
- OPEN SPACE
- NGPE
- STATE PARK

### Issaquah City Limits

#### Streets

- STREET
- HIGHWAY
- RAMP
- WALKWAY
- DRIVEWAY; ACCESS; RETAIL AC
- PERMANENTLY CLOSED

#### Trails

#### Railroad

#### Water Bodies

1: 4,166





King County iMap

EXHIBIT 2



The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 8/6/2021

Notes:





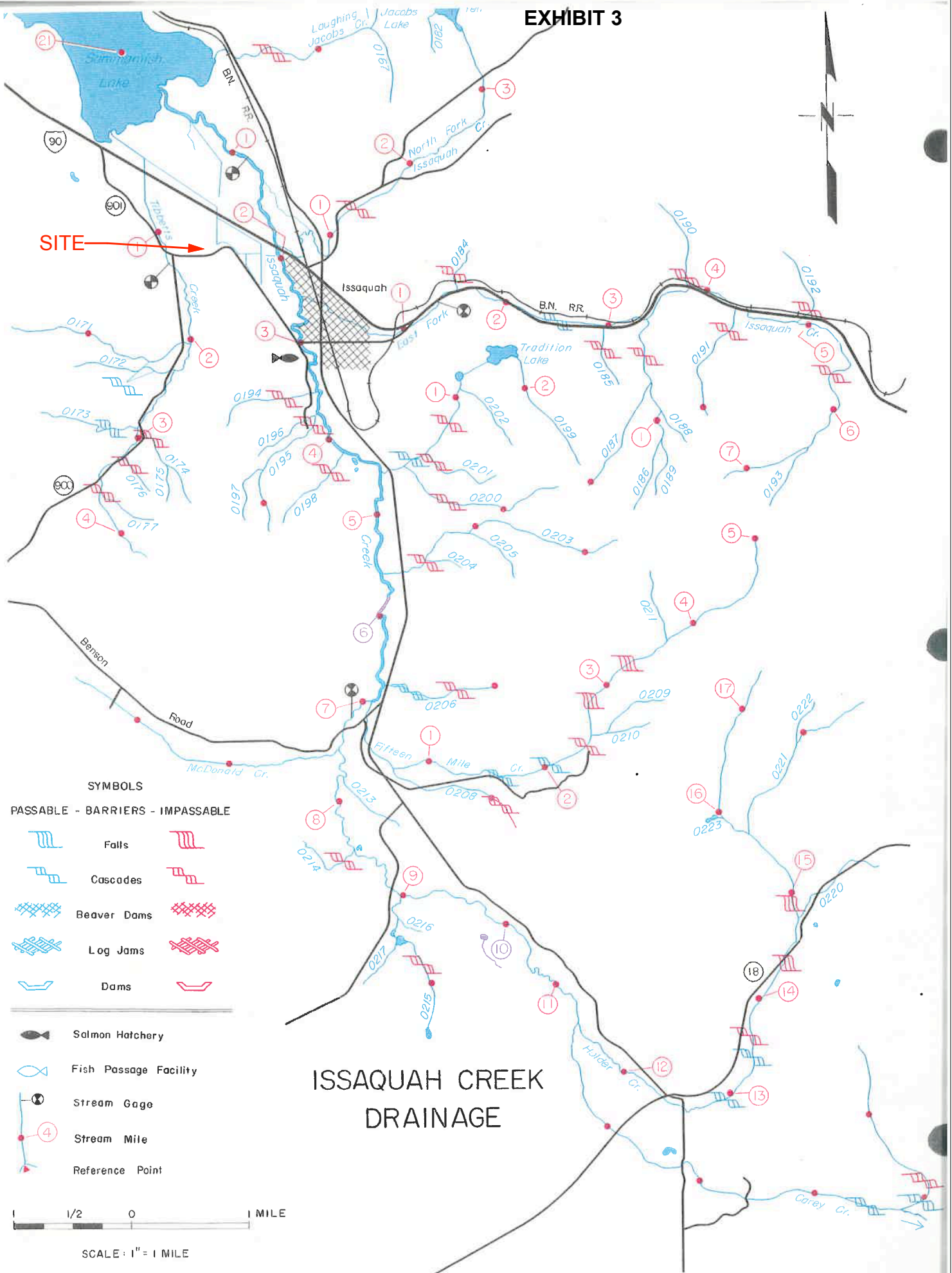


EXHIBIT 4

ISSAQUAH SHORT PLAT NO. 93-02  
KING COUNTY, WASHINGTON

KNOW ALL PEOPLE BY THESE PRESENTS that we, the undersigned owners of interest in the land hereby short subdivided, hereby declare this short plat to be the graphic representation of the short subdivision made hereby, and do hereby dedicate to the use of the public forever all streets and avenues not shown as private hereon and dedicate the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes, and also the right to make all necessary slopes for cuts and fills upon the lots shown thereon in the original reasonable grading of said streets and avenues, and further dedicate to the use of the public all the easements and tracts shown on this short plat for all public purposes as indicated thereon, including but not limited to parks, open space, utilities and drainage unless such easements or tracts are specifically identified on this short plat as being dedicated or conveyed to a person or entity other than the public, in which case we do hereby dedicate such streets, easements, or tracts to the person or entity identified and for the purpose stated.  
  
Further, the undersigned owners of the land hereby short subdivided agree for themselves, their heirs and assigns and any person or entity deriving title from the undersigned, any and all claims for damages against City of Issaquah, its successors and assigns which may be occasioned by the establishment, construction, or maintenance of roads and/or drainage systems within this short subdivision other than claims resulting from inadequate maintenance by City of Issaquah.  
  
Further, the undersigned owners of the land hereby short subdivided agree for themselves, their heirs and assigns to indemnify and hold City of Issaquah, its successors and assigns, harmless from any damage, including any costs of defense, claimed by persons within or without this short subdivision to have been caused by alterations of the ground surface, vegetation, drainage, or surface or sub-surface water flows within this short subdivision or by establishment, construction or maintenance of the roads within this short subdivision. Provided, this waiver and indemnification shall not be construed as releasing City of Issaquah, its successors or assigns, from liability for damages, including the cost of defense, resulting in whole or in part from the negligence of City of Issaquah, its successors, or assigns.  
  
This subdivision, dedication, waiver of claims and agreement to hold harmless is made with the free consent and in accordance with the desires of said owners.  
  
IN WITNESS WHEREOF we set our hands and seals.  
  
Name \_\_\_\_\_ Name \_\_\_\_\_  
Name \_\_\_\_\_ Name \_\_\_\_\_  
  
State of Washington  
County of KING  
  
I certify that I know or have satisfactory evidence that  
John C. Neale  
signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.  
  
Signature of Notary Public \_\_\_\_\_  
Dated March 20, 1994  
My appointment expires 7-13-96

DEDICATION

APPROVALS  
Issaquah Planning Department:  
Examined and approved this 30 day of MARCH, 1994  
Samuel McKague  
Planning Manager  
Issaquah Department of Public Works:  
Examined and approved this 30 day of MARCH, 1994  
Public Works Director  
King County Department of Assessments :  
Examined and approved this 4 day of APRIL, 1994  
Scott Noble  
Assessor  
Deputy Assessor  
Account Number Post # 930406-9304-9310

RECORDING NO. 9404049011  
VOL./PAGE 97 200  
SCALE: 1 inch = 200 ft. 0 100 200 300 400 500  
PORTION OF NW & NE 1/4 of NW 1/4, S. 28 T. 24 N. R. 6 E., W.M.  
& PORTION OF SE1/4 & SW1/4 OF SW1/4 S. 21 T. 24N., 6E., W.M.

LOT 1

LOT 2

LOT 3

LOT 4

EXISTING LOT "A"

EXISTING LOT "B"

NEW LOT "A"

NEW LOT "B"

SEE SHEETS 2 & 3 FOR MORE DETAIL

WEST LINE OF EAST 1460.31

EXISTING BUILDING

EXISTING BUILDING

EXISTING BUILDING

EXISTING BUILDING

NEWPORT WAY NW

12th AVE. N.W.

7th AVE NW

NW LOCUST ST

SUBDIVISION LINE

S. LINE N. 50' SE 1/4 NW 1/4

OLD LOT LINE S. 28-78-07 W. LINE OF EAST 824.30

(TITLE REPORT) PARCEL "A"

(TITLE REPORT) PARCEL "B"

(TITLE REPORT) PARCEL "C"

(TITLE REPORT) PARCEL "D"

(P.S.H. # 2 CONDEMNED IN SUP. CRT. CAUSE # 317001)

NEW MAPLE STREET

20 21

29 28

21 28

EXISTING LOT B  
PARCEL A:  
THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING NORTHWESTERLY, NORTHERLY AND NORTHEASTERLY OF NEWPORT-ISSAQUAH ROAD NO. 1025 (ALSO KNOWN AS SOUTHEAST NEWPORT WAY); EXCEPT THAT PORTION LYING NORTHERLY OF THE SOUTH LINE OF LOT 2 OF CITY OF ISSAQUAH SHORT PLAT NUMBER 78-07 AS DEPICTED BY LOT LINE ADJUSTMENT RECORDED UNDER RECORDING NUMBER 8007230434; AND EXCEPT THAT PORTION THEREOF LYING WITHIN THE EAST 1460.31 FEET OF THE NORTHWEST QUARTER OF SECTION 28, AS MEASURED AT RIGHT ANGLES TO THE EAST LINE OF THE NORTHWEST QUARTER; AND EXCEPT THAT PORTION THEREOF LYING WITHIN 212TH AVENUE SOUTHEAST (12TH AVENUE NORTHWEST); AND EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED TRACT, BEING THE INTERSECTION OF THE EASTERLY MARGIN OF 12TH AVENUE N.W. AND THE NORTHERLY MARGIN OF S.E. NEWPORT WAY AND BEING THE SOUTHWEST CORNER OF LOT 3, ISSAQUAH SHORT PLAT NUMBER 78-07, AS AMENDED UNDER RECORDING NUMBER 812190858 AND LOT LINE ADJUSTMENT UNDER RECORDING NUMBER 8007230434; THENCE NORTH 01 DEGREES 39'22" EAST ALONG THE EAST MARGIN OF 12TH AVENUE N.W. A DISTANCE OF 450.00 FEET; THENCE SOUTH 88 DEGREES 20'38" EAST A DISTANCE OF 636.60 FEET; THENCE SOUTH 01 DEGREES 39'22" WEST A DISTANCE OF 201.72 FEET TO AN INTERSECTION WITH THE NORTHERLY MARGIN OF S.E. NEWPORT WAY; THENCE SOUTH 63 DEGREES 23'02" WEST ALONG SAID NORTHERLY MARGIN A DISTANCE OF 326.35 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG THE ARC OF A 788.60 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 26 DEGREES 30'11", AN ARC DISTANCE OF 364.78 FEET TO THE POINT OF BEGINNING;  
PARCEL B:  
THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY LYING WESTERLY OF THE WEST LINE AND ITS NORTHERLY EXTENSION OF THE EAST 824.30 FEET OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; THE EAST 1460.31 FEET AS MEASURED AT RIGHT ANGLES TO THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON OF THE FOLLOWING DESCRIBED PROPERTY: THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING SOUTHERLY OF SOUTHEAST 64TH STREET AND SOUTHWESTERLY OF PRIMARY STATE HIGHWAY NO. 2, AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 317001; ALSO THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF NEWPORT-ISSAQUAH ROAD NO. 1025 AND SOUTHWESTERLY OF PRIMARY STATE HIGHWAY NO. 2, AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 317001, ALL IN SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; EXCEPT THE SOUTH 30 FEET THEREOF DEDICATED TO THE CITY OF ISSAQUAH FOR PUBLIC RIGHT OF WAY AND UTILITIES BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 8810241030.  
PARCEL C:  
THAT PORTION OF THE FOLLOWING DESCRIBED PROPERTY LYING EASTERLY OF THE WEST LINE AND ITS NORTHERLY EXTENSION OF THE EAST 824.30 FEET OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; THE EAST 1460.31 FEET AS MEASURED AT RIGHT ANGLES TO THE EAST LINE OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON OF THE FOLLOWING DESCRIBED PROPERTY: THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING SOUTHERLY OF SOUTHEAST 64TH STREET AND SOUTHWESTERLY OF PRIMARY STATE HIGHWAY NO. 2, AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 317001; ALSO THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF NEWPORT-ISSAQUAH ROAD NO. 1025 AND SOUTHWESTERLY OF PRIMARY STATE HIGHWAY NO. 2, AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 317001, ALL IN SECTION 28, TOWNSHIP 24 NORTH, RANGE 6 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; EXCEPT THE EAST 60 FEET THEREOF AND THE SOUTH 30 FEET THEREOF DEDICATED TO THE CITY OF ISSAQUAH FOR PUBLIC RIGHT OF WAY AND UTILITIES BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 8810241030.  
PARCELS A-D ALSO SHOWN OF RECORD AS NEW LOT B, ISSAQUAH LOT LINE ADJUSTMENT RECORDED UNDER RECORDING NUMBER 8603040035.  
TOGETHER WITH EXISTING LOT A  
THAT PORTION OF LOT 3, ISSAQUAH SHORT PLAT 78-07 AS AMENDED UNDER A.F. #7812190858 AND REVISED UNDER L.L.A. UNDER A.F. #8007230434, MORE PARTICULARLY DESCRIBED AS FOLLOWS: THAT PORTION OF THE NW 1/4 OF THE NW 1/4 OF SECTION 28, TOWNSHIP 24 N. RANGE 6 E., W.M. IN KING COUNTY, WASHINGTON, LYING NORTHERLY OF NEWPORT-ISSAQUAH ROAD #1025 (ALSO KNOWN AS SE NEWPORT WAY) EXCEPT THAT PORTION LYING WITHIN 12TH AVE. N.W. SAID PARCEL BEING DESCRIBED AS FOLLOWS: BEGINNING AT THE SW CORNER OF THE ABOVE DESCRIBED TRACT BEING THE INTERSECTION OF THE EASTERLY MARGIN OF 12TH AVE. N.W. AND THE NORTHERLY MARGIN OF S.E. NEWPORT WAY AND BEING THE SOUTHWEST CORNER OF LOT 3, AND LOT LINE ADJUSTMENT UNDER A.F. #8007230434; THENCE NORTH 01 DEGREE 39'22" EAST ADJACENT TO THE EAST MARGIN OF 12TH AVE. N.W. A DISTANCE OF 450.00 FEET; THENCE SOUTH 88 DEGREES 20'38" EAST A DISTANCE OF 636.60 FEET; THENCE SOUTH 01 DEGREE 39'22" WEST A DISTANCE OF 201.72 FEET TO AN INTERSECTION WITH THE NORTHERLY MARGIN OF S.E. NEWPORT WAY; THENCE SOUTH 63 DEGREES 23'02" WEST ALONG SAID NORTHERLY MARGIN A DISTANCE OF 326.35 FEET TO A POINT OF CURVATURE; THENCE WESTERLY ALONG THE ARC OF A 788.60 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 26 DEGREES 30'11" AN ARC DISTANCE OF 364.78 FEET TO THE POINT OF BEGINNING; EXCEPT THOSE PORTIONS THEREOF DEDICATED TO THE CITY OF ISSAQUAH BY INSTRUMENT RECORDED UNDER A.F. #8611101024, (KNOWN AS NEW LOT A OF CITY OF ISSAQUAH L.L.A. #88-03 AS RECORDED UNDER KING COUNTY RECORDING #8805230297)  
EXCEPT:  
NEW LOT A L.L.A. NO. 93-07 (SEE SHEET 3 OF 3 FOR DESCRIPTION)

RECORDING NO. 9404049011  
VOL./PAGE 97 200  
SCALE: 1 inch = 200 ft. 0 100 200 300 400 500  
PORTION OF NW & NE 1/4 of NW 1/4, S. 28 T. 24 N. R. 6 E., W.M.  
& PORTION OF SE1/4 & SW1/4 OF SW1/4 S. 21 T. 24N., 6E., W.M.

1" = 200'

VOL./PAGE

RECORDER'S CERTIFICATE  
filed for record this 4th day of Apr., 1994 at P.M.  
in book 97 of Subst page 200, at the request of  
Gordon S. Rector  
Mgr. Gordon S. Rector Supt. of Records

LAND SURVEYOR'S CERTIFICATE  
This Short Plat correctly represents a survey made by me or under my direction in conformance with the requirements of the appropriate State and Municipal Statutes and Ordinances.  
Gordon S. Rector L.S. 11691 3/25/94  
Certificate No. Date

TARGET SURVEYORS, INC.  
58 NORTH FRONT STREET, ROOM 200  
ISSAQUAH, WASHINGTON 98027  
(206) 392-8533 FAX (206) 557-0470  
REVISED 8/10/93 & 8/29/93 (lots)  
REVISED 9/23/93 (LOTS 1 & 3)  
REVISED 12/10/93 (LOTS 1 & 3)  
REVISED 3/25/94 misc. PLT 3/25/94

GORDON S. RECTOR  
STATE OF WASHINGTON  
REGISTERED  
PROFESSIONAL LAND SURVEYOR  
EXPIRES 11-26-94

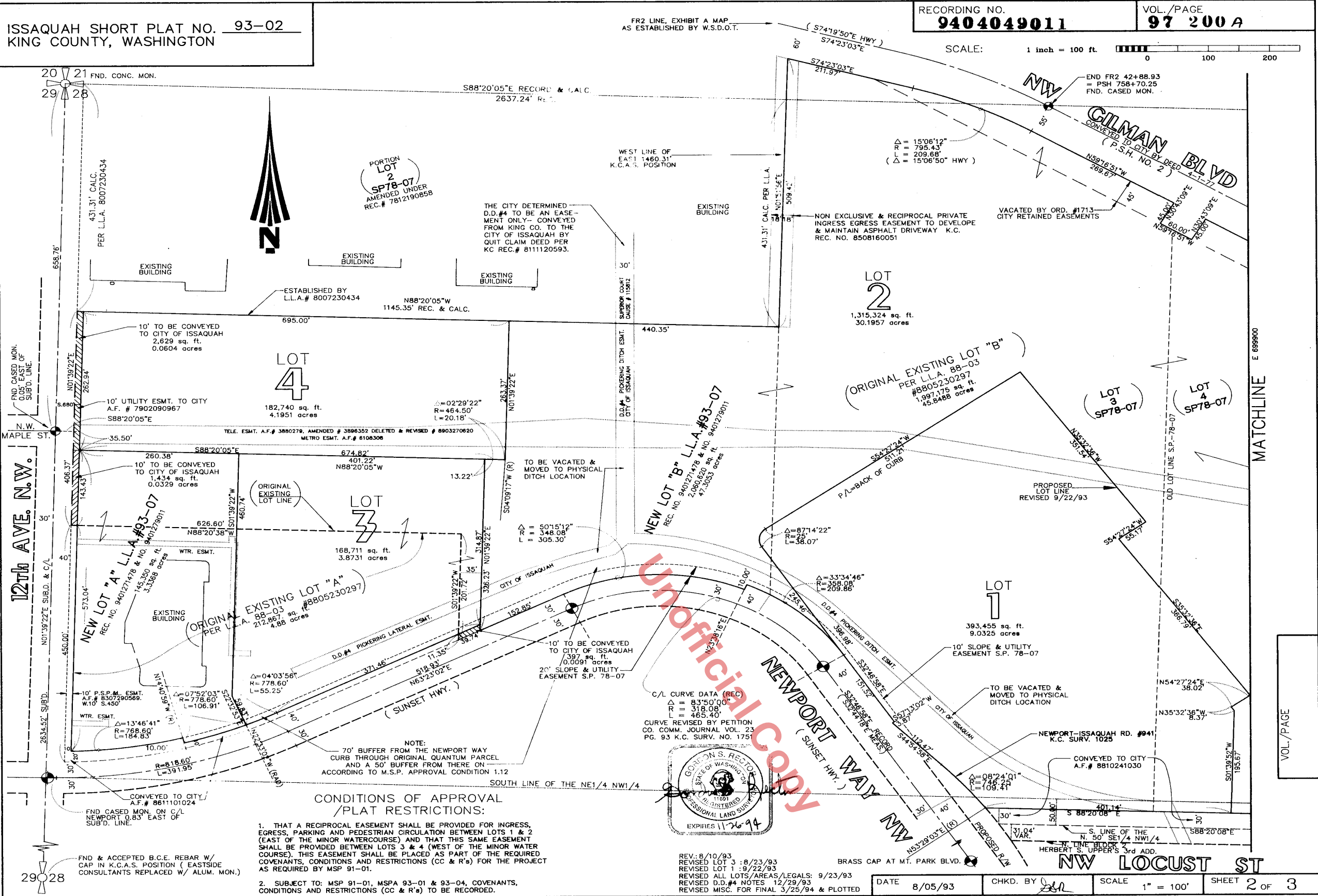
SHORT PLAT  
FOR  
TRAMMELL CROW COMPANY  
COMMONS AT ISSAQUAH  
DWN. BY DERSHAM DATE 8/05/93 JOB NO. 89-010  
CHKD. BY Ben SCALE 1" = 200' SHEET 1 OF 3

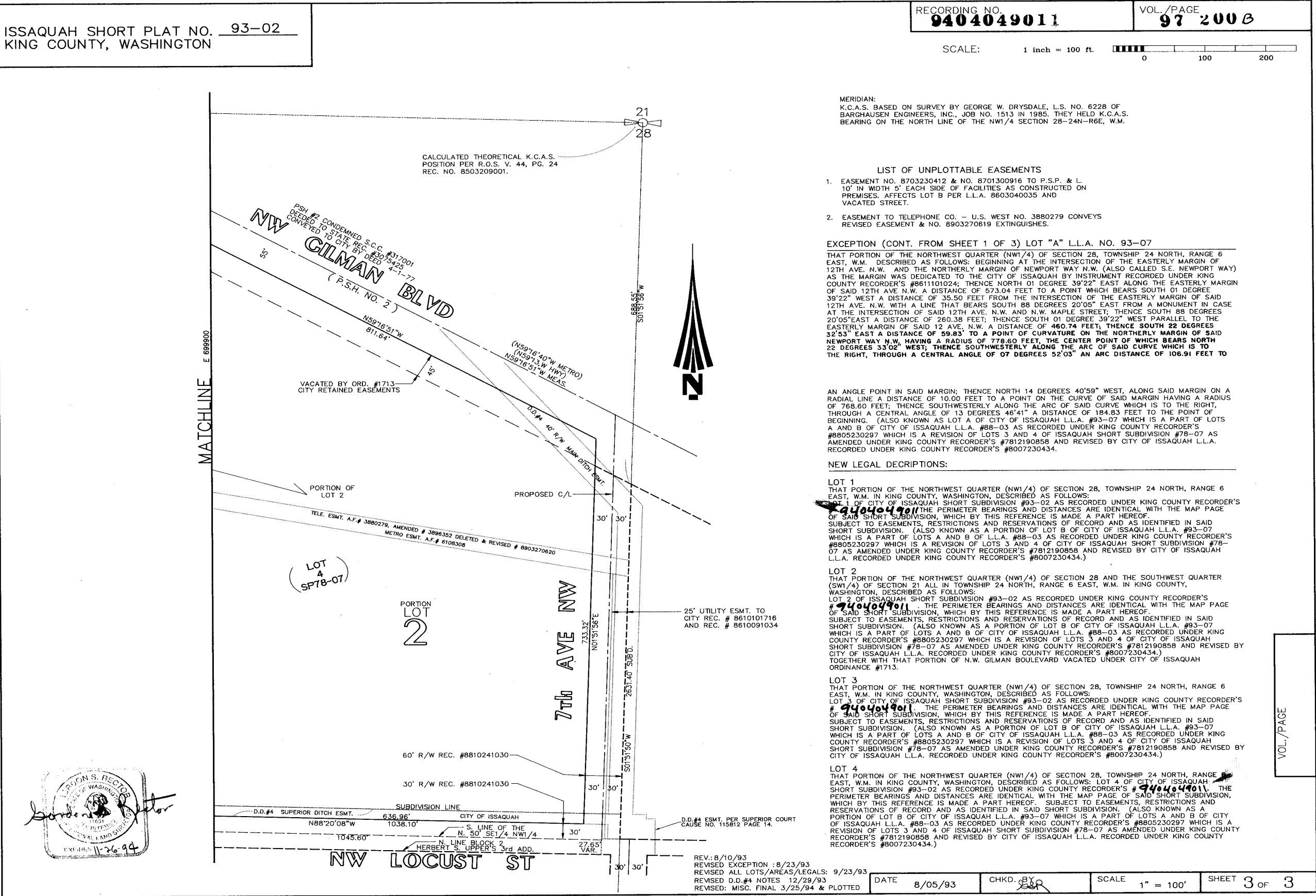
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https://recordsearch.kingcounty.gov/LandmarkWeb/search/index?theme=.blue&section=searchCriteriaDocuments&quickSearchSelection=#

1/3







# In the Superior Court of the State of Washington in and for King County

Drainage District No. 4 of King County, State of Washington, a Public Corporation, and H. R. Pickering, and Fred S. Tibbitts and J. W. Barlow, as the Board of Commissioners of said Drainage District,

Petitioners,

vs.

Alvex Bros. Milling Company, a corporation; Albert Anderson, a bachelor, John Anderson and Jane Doe Anderson, his wife; John W. (sometimes designated J. W.) Barlow and Wilhelmina Barlow, his wife; Charles Bennett and Anne Bennett, his wife; Jewel Bloom, Mary Bosqui and Daniel Bosqui, her husband; Frederick Burman and Jane Doe Burman, his wife; Eva Bush and William Bush, her husband; George Clark, Sr.; James Clark and Jane Doe Clark, his wife; Emily A. Darr and John Darr, her husband; Isabelle Drylie and John Doe Drylie, her husband; James Foreman and Jane Doe Foreman, his wife; Sevilla M. (sometimes designated S. M.) Furnell and Frank Furnell, her husband; John H. (sometimes designated J. H.) Gibson and Jane Doe Gibson, his wife; T. M. Gibson and Jane Doe Gibson, his wife; Tom Haro and Hanna Haro, his wife; Issaquah State Bank, a corporation; Swan Johnson and Jane Doe Johnson, his wife; Alfred Kerola and Josephine Kerola, his wife; King County, a municipal corporation; Mary Kinnunen and John Doe Kinnunen, her husband; Matt Nikko and Oona (sometimes called Emma) Nikko, his wife; Herman Peltola and Jane Doe Peltola, his wife; Alfred J. Peters and Jane Doe Peters, his wife; Ernest E. Pickering and Camella Pickering, his wife; Royal R. Pickering, a bachelor; William Pickering and Jane Doe Pickering, his wife; William W. Pickering and Jane Doe Pickering, his wife; Yena (sometimes spelled Genia) Prentice and Andrew Prentice, her husband; Peter A. Reppee (sometimes spelled Reppe) and Jane Doe Reppee, his wife; Peter Reppee (sometimes spelled Reppe, Jr.) and Jane Doe Reppee, his wife; Seattle Brewing & Malting Company, a corporation; Herman Settin (sometimes spelled Settem) and Grace E. Settin, his wife; Joseph Settin (sometimes spelled Settem) and Jane Doe Settin, his wife; P. J. Smith; Joe Spak and Jane Doe Spak, his wife; Katie Spak and John Doe Spak, her husband; H. Suchocki (sometimes spelled Suchocki) and Jane Doe Suchocki, his wife; Superior Coal & Improvement Company, a corporation; The Town of Issaquah, a municipal corporation; George W. Tibbitts and Rebecca or R. A. Tibbitts, his wife; Fred S. Tibbitts and Nora (sometimes known as Elmore) Tibbitts, his wife; Herbert S. Upper, a bachelor; Victor Vigelinus and Jane Doe Vigelinus, his wife; Thos. H. Wilson and Mary J. Wilson, his wife; Washington Savings & Loan Association, a corporation; Agnes H. Wood (formerly Agnes B. Peterkin) and Charles H. Wood, her husband; Anthony Yarnes; Frank Wright and Jane Doe Wright, his wife; Teophila Schroeder and John Doe Schroeder, her husband; August Talus and Jane Doe Talus, his wife; O. A. Kells and Jane Doe Kells, his wife; C. R. Berry and Jane Doe Berry, his wife; Paul Ambrose and Jane Doe Ambrose, his wife; Gus Matilla and Jane Doe Matilla, his wife; William Matilla and Jane Doe Matilla, his wife; Helen Jones and John Doe Jones, her husband; A. F. Burrows and Jane Doe Burrows, his wife; Matt Matilla and Jane Doe Matilla, his wife; H. Bram and Jane Doe Bram, his wife; H. M. Johnson and Jane Doe Johnson, his wife; E. J. Anderson and Jane Doe Anderson, his wife; George E. Brown and Jane Doe Brown, his wife; and also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate and property described in the petition herein.

Defendants.

No. 115812

JUDGMENT.

BEST COPY  
FROM  
COUNTY

1 This matter having heretofore come on for trial before  
2 John S. Jurey, one of the Judges of the above entitled Court, and  
3 before a jury regularly and duly empanelled to try the above  
4 entitled cause, the petitioners appearing by their attorneys  
5 Shorett, McLaren & Shorett, and certain of the defendants appear-  
6 ing by their attorneys of record herein, and the Court having  
7 heretofore found, by satisfactory proof that all of the defendants  
8 in this proceeding have been duly served with summons as provided  
9 by law, and having been satisfied by competent proof that said im-  
10 provement is practicable and conducive to the public health, wel-  
11 fare and convenience and will increase the value of said lands for  
12 the purpose of public revenue, and that the contemplated use for  
13 which the land, real estate, premises and other property sought to  
14 be appropriated is really a public use, and that the same are  
15 required and necessary for the establishment of said improvement,  
16 and that said improvement has a good and sufficient outlet, and  
17 the petitioners having in open Court offered and consented that  
18 the following may be considered by the jury in their verdicts  
19 and may be incorporated in the judgment of the Court herein, namely:  
20 "That the right of way which is being condemned shall not be fenced  
21 or enclosed in any manner by the District; that the owners of the  
22 said property shall at all times have the right and privilege of  
23 making such use of the right-of-way being condemned as will not  
24 interfere with the drainage system being constructed and maintained  
25 therein, and the jury having returned its verdicts herein, as-  
26 certaining, determining and awarding the respective amounts of com-  
27 pensation and damages to be allowed to the defendants by reason of  
28 the appropriation of the respective pieces of property herein  
29 appropriated, and the respective amounts of maximum benefits to be  
30 assessed against the property which will be benefited by said pro-  
posed improvement, and said verdicts were thereupon returned into

SHORETT, McLAREN & SHORETT

ATTORNEYS AT LAW

ST. LOUIS, MO.

SEAL



Court and reported as in other cases, and which said verdicts were as follows, to-wit:

THE POLYMER LETTERS

## SUPERIOR DITCH

Beginning at a point on the Pickering Ditch North  $21^{\circ} 16' 30''$  West 834.40 feet from the Southeast corner of Lot 11, Block 2, Herbert S. Upper's Third Addition to Issaquah, in the Southeast  $\frac{1}{4}$  of the North-west  $\frac{1}{4}$  of Section 28, Township 24, North Range 6 East, W. M.; thence South  $89^{\circ} 45' 04''$  East 800.03 feet to a point on the East line of said Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 28, 10 feet South from the Northeast corner thereof, where it joins the Main Ditch.

## PRENTICE DITCH

Beginning at a point which bears from quarter corner common to Sections 29, 20, Township 24 North, Range 6 East, W. M., South  $66^{\circ} 12' 30''$  East 702.38 feet; running thence North  $22^{\circ} 18' 35''$  West 310 feet to a point on the line between Sections 29 and 20; thence continuing in Section 20, North  $20^{\circ} 35' 35''$  West 885 feet; thence North  $26^{\circ} 21' 05''$  West 480 feet; thence North  $1^{\circ} 11' 25''$  East 1842 feet to a point on the West line of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, 500 feet North of the Southwest corner of said tract, where it joins the Main Ditch.

## ANDERSON FORESMAN DITCH

Beginning at a point in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 24 North Range 6 East, W. M., 334 feet South and 662 feet West from the Northeast corner of said tract, running thence North  $41^{\circ} 43' 00''$  West 20.20 feet to a point in Government Lot 2, Section 20, Township 24 North Range 6 East, W. M., 352 feet South and 700 feet West from the Northeast corner thereof, having an outlet in Lake Sammamish.

## BARLOW DITCH

Beginning at a point on the East line of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North Range 6 East, W. M., which point is 404.5 feet South of the Northeast corner of said tract; running thence North  $33^{\circ} 07' 50''$  West 260.60 feet; thence North  $46^{\circ} 39' 20''$  West 192.10 feet; thence North  $23^{\circ} 09' 10''$  East 165.32 feet; thence North  $8^{\circ} 09' 10''$  East 97.96 feet; thence North  $27^{\circ} 30' 40''$  West 108.25 feet; thence North  $16^{\circ} 31' 10''$  West 123.10 feet; thence North  $8^{\circ} 37'$  West 133.50 feet; thence North  $40^{\circ} 09' 20''$  West 41.87 feet; thence North  $11^{\circ} 28' 30''$  West 113.22 feet; thence North  $39^{\circ} 58' 00''$  East 137.00 feet; thence North  $32^{\circ} 04' 10''$  East 480.70 feet, to a point in Government Lot 5, 1020 feet North and 532 feet West of the Southeast corner of said Government Lot 5.

That the lands which it is claimed will be benefited by such drainage system are situated in said District in said King County; that a description of the land, real estate, premises and property which it is claimed to be benefited by such drainage system, the names of the respective owners of and all parties or corporations having any interest appearing of record therein, with the number of acres owned by each land owner and the estimated amount of benefits per acre, or per lot, to be derived by such land owner from the construction of said proposed drainage system are as follows:

The following lands being in Section 28, Township 24 North Range 6 East, W. M.:

Landowners and Description of Land Desired	Number of Acres (more or less)	Maximum Benefits per Acre
Joseph Setlin (sometimes spelled Settem) and Jane Doe Setlin, his wife. Portion of $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ , also $SE\frac{1}{2}$ of $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ lying East of County Road	6.58	\$ 6.25
Herbert Setlin (sometimes spelled Settem) and Grace E. Setlin, his wife. Portion of $N\frac{1}{2}$ of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ , also $N\frac{1}{2}$ of $SE\frac{1}{4}$ of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ , lying East of County Road (these tracts owned by Barlow and Anderson)	7.80	6.25
J. W. Barlow and Wilhelmina Barlow, his wife. Commencing at a point 340 ft. North and 780 ft. West of S. E. corner of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ of Sec. 28; thence North 125 ft.; thence West 50 ft.; thence South 125 ft.; thence East 50 ft. to beginning	0.143	6.25
Albert Anderson, a bachelor; Jewel Bloom, judgment creditor; Seattle Brewing & Malting Co., judgment creditor. North 135 ft. of South 650 ft. of West 340 ft. of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ , lying East of County Road	0.327	6.25
Peter A. Reppe (sometimes spelled Reppes) and Jane Doe Reppe, his wife. Portion of $N\frac{1}{2}$ of $NW\frac{1}{4}$ of $SE\frac{1}{4}$ , lying East of County Road	0.75	18.75
Peter A. Reppe (sometimes spelled Repps) and Jane Doe Reppe, his wife. Portion of, beginning at S. E. corner of $NW\frac{1}{4}$ of Sec. 28; thence running South 288.5 ft.; thence West 136 ft.; thence North 368.5 ft.; thence East 346 ft. to point of beginning, lying East of County Road	1.83	25.00
Sean Johnson and Jane Doe Johnson, his wife. All that portion of $SE\frac{1}{4}$ of $SE\frac{1}{4}$ , lying West of Block	10.00	6.25

# Landowners and Description of Land Owned.

Number  
of Acres  
Owned

Maximum  
Benefits  
per Acre

The following lands being in Herbert S. Upper's Second Addition to Issaquah:

Mary Kinnunen and <del>John Doe</del> Kinnunen, her husband—Lot 1, Block 4	0.604	\$25.00
Lot 2, Block 4	0.499	25.00
Peter Reppe (sometimes spelled Reppen), Jr. and <del>Jane Doe</del> Reppe, his wife—Lot 3, Block 4	0.499	25.00
Lot 4, Block 4	0.499	25.00
James Clark and Jane Doe Clark, his wife; George Clark, Sr., mortgagee—Lot 2, Block 5	0.732	31.25
Lot 9, Block 5	0.716	31.25
Lot 10, Block 5	0.716	25.00
Katie Spak and <del>John Doe</del> Spak, her husband—Lot 6, Block 5	0.716	50.00
Lot 7, Block 5	0.716	43.75
Lot 8, Block 5	0.716	37.50
Joe Spak and <del>Jane Doe</del> Spak, his wife—Lot 3, Block 5	0.634	37.50
Lot 4, Block 5	0.666	43.50
Lot 5, Block 5	0.639	50.00
R. Suchochi (sometimes spelled Suchocki) and Jane Doe Suchochi, his wife, Anthony Yarny, mortgagee—Lot 1, Block 5	0.764	25.00
Herbert S. Upper, a bachelor; Frank Mriglot and Jane Doe Mriglot, his wife; Teophila Schroeder and John Doe Schroeder, her husband—Lot 12, Block 3	0.117	6.25
Lot 11, Block 3	0.399	6.25
Lot 10, Block 3	0.467	6.25
Lot 9, Block 3	0.465	6.25
Lot 8, Block 3	0.465	6.25
Lot 7, Block 3	0.464	6.25
Lot 6, Block 3	0.2271	6.25
Lot 5, Block 3	0.0702	6.25
Lot 4, Block 3	0.0544	6.25
Lot 3, Block 3	0.0763	6.25
Lot 2, Block 3	0.0208	6.25

The following lands being in Herbert S. Upper's Third Addition to Issaquah:

Isabella Drylie and John Doe Drylie, her husband—Lot 6, Block 1	0.8871	\$47.75
Herbert S. Upper, a bachelor; A. P. Burrows and Jane Doe Burrows, his wife; Matt Matilla and Jane Doe Matilla, his wife—Lot 1, Block 1	0.665	43.75
Lot 2, Block 1	0.665	37.50
Lot 3, Block 1	0.665	31.75
Lot 4, Block 1	0.9148	31.25
Lot 5, Block 1	0.979	41.75
Herbert S. Upper, a bachelor; C. R. Berry and Jane Doe Berry, his wife; H. Bruce and Jane Doe Bruce, his wife; H. M. Johnson and Jette Doe Johnson, his wife; E. H. Anderson and Jane Doe Anderson, his wife; George E. Brown and Jane Doe Brown, his wife—Lot 2, Block 2	0.8264	50.00
Lot 3, Block 2	0.8264	50.00
Lot 4, Block 2	0.8264	50.00
Lot 5, Block 2	0.8264	50.00
Lot 6, Block 2, less right-of-way	0.9493	75.00
Lot 7, Block 2, less right-of-way	0.8331	75.00
Lot 8, Block 2, less right-of-way	0.7390	75.00
Lot 9, Block 2, less right-of-way	0.9232	75.00
Lot 10, Block 2, less right-of-way	0.8318	75.00
Lot 11, Block 2, less right-of-way	1.52	75.00
Lot 12, Block 2	1.075	37.50
Lot 13, Block 2	1.043	43.75
Lot 14, Block 2	0.9270	50.00
Lot 15, Block 2, less N. 30 ft. thereof		
T. M. Gibson and Jane Doe Gibson, his wife—Lot 1, Block 2	0.8264	50.00
N. 30 ft. of Lot 15, Block 2	0.0827	50.00

Landowners and Description of Land Owned.

Number of Acres Owned. Maximum Benefit per Acre.

Alfred J. Peters and Jane Doe Peters, his wife—Lot 12, Block 2

1.108 43.75

The following lands being in Herbert S. Upper's Second Addition to Issaquah

John H. Gibson and Jane Doe Gibson, his wife—Lot 8, Block 6

0.8857 \$37.50

Herbert S. Upper, a bachelor; August Talus and Jane Doe Talus, his wife; G. A. Kells and Jane Doe Kells, his wife; T. M. Gibson and Jane Doe Gibson, his wife; C. R. Berry and Jane Doe Berry, his wife; John Gibson and Jane Doe Gibson, his wife; Paul Ambrose and Jane Doe Ambrose, his wife—Lot 1, Block 6

0.816 25.00

Lot 2, Block 6

0.816 31.25

Lot 3, Block 6

0.816 37.50

Lot 4, Block 6

0.816 43.75

Lot 5, Block 6

0.816 50.00

Lot 6, Block 6

0.9487 50.00

Lot 7, Block 6

0.9172 43.75

Lot 8, Block 6

0.8544 31.75

Lot 10, Block 6

0.8227 25.00

Frederick Burman and Jane Doe Burman, his wife—Lot 4, Block 7

0.5662 6.25

Herbert S. Upper, a bachelor; Gus Matilla and Jane Doe Matilla, his wife; William Matilla and Jane Doe Matilla, his wife; Helen Jones and John Doe Jones, her husband—Lot 1, Block 7

0.3902 6.25

Lot 2, Block 7

0.4576 8.25

Lot 3, Block 7

0.5065 6.25

Lot 5, Block 7

0.5317 6.25

The following lands being in Section 28, Twp. 24 N. R. 6 E. W. M.:

Superior Coal & Improvement Co.; Victor Vigelinus and Jane Doe Vigelinus, his wife claimants. A 100 ft. strip, being 50 ft. on both sides of the following described corner line. Commencing at a point on the South line of the NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 28, 1581 ft. East of S. W. corner of NW $\frac{1}{4}$  of NW $\frac{1}{4}$ ; thence North 40° West in a straight line 410 ft.; thence curving to the left with a 12° curve through 74° 18' of curvature a distance of 610.83 ft.; thence in a straight line South 62° 12' West 598 ft.; thence curving to the left with a 12° curve through 33° 58' of curvature, a distance of 282.55 ft.; thence in a straight line South 28° 14' West 4 ft. to point on West boundary of Sec. 28, 125 ft. South of said S. W. Corner of NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of said Section, Township and Range, less right-of-way

4.21 62.50

Superior Coal & Improvement Co.—North 50 ft. of SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 28, lying East of County Road and North 50 ft. of SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of said Sec., Twp. and Range, lying West of Issaquah Creek, less strip for right-of-way

2.34 62.50

Charles Bennett and Anne Bennett, his wife—Starting 654 ft. West of center of NE $\frac{1}{4}$  of Sec. 28; thence West 654 ft., more or less, to the West line of said quarter Section; thence North 1320 ft.; thence East to intersection of Issaquah Creek; thence in a southerly direction following the Creek to point of beginning, less strip for right-of-way

16.52 38.75

William W. Pickering and Jane Doe Pickering, his wife; Royal R. Pickering; Ernest E. Pickering and Camelia Pickering, his wife; Sevilla M. Farnell and Frank Farnell, life estate—NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 28, lying Northerly of County Road, less strip for right-of-way

37.52 75.00

NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 28, lying Northerly of County Road, less strip for right-of-way

31.42 57.50

The following lands being in Section 21, Township 24 North Range 6 East, W. M.:

William W. Pickering and Jane Doe Pickering, his wife; Royal R. Pickering; Ernest E. Pickering and Camelia Pickering, his wife; Sevilla M. Farnell and Frank Farnell, life estate—NE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 21

35.96 18.75

NW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Sec. 21, less right-of-way

39.09 31.25

SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Sec. 21, less right-of-way

36.92 37.50

SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Sec. 21, less right-of-way

37.66 50.00

Landowners and Description of Land Owned	Number of Acres Owned	Maximum Benefits per Acre
Mrs. Eva Bush and William Bush, her husband, Albers Bros. Milling Co., judgment creditor—NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 21, lying West of Issaquah Creek	0.104	6.25
Rudolf A. Darst and John Darst, her husband—S $\frac{1}{2}$ of SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 21, lying West of Issaquah Creek	3.85	6.25
The following lands being in Section 29, Township 24 North Range 6 East, W. M.		
Yona (sometimes spelled Yona) Prentice and Andrew Prentice, her husband—N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 29	20.09	<del>18.77</del> 16.77
Part of N $\frac{1}{2}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 29, lying East of County Road, less right-of-way	13.09	<del>45.00</del> 33.00
William W. Pickering and Jane D. Pickering, his wife, Royal B. Pickering, Ernest E. Pickering and Camella Pickering, his wife, R. A. Tibbetts and George W. Tibbetts, her husband, S. M. Furnell and Frank Furnell, her husband, owners—Part of the S $\frac{1}{2}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 29 (except West 198 ft. of East 528 ft. of South 220 ft.), lying East of County Road	10.00	6.25
George W. Tibbetts and Rebecca Tibbetts, his wife—Portion of—Beginning 330 ft. West of S. E. corner of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 29; thence North 220 ft.; thence West 198 ft.; thence South 220 ft.; thence East 198 ft. to beginning	0.284	6.25
The following lands being in Section 20, Township 24 North Range 6 East, W. M.		
Mary Hosqui and Dan Hosqui, her husband; Issaquah State Bank, mortgagee—S $\frac{1}{2}$ of S $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 20	10.00	\$28.12
Ernest E. Tibbetts and Nora (sometimes known as Ethora) Tibbetts, his wife, James Foreman, mortgagee—N $\frac{1}{2}$ of S $\frac{1}{2}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20	10.00	31.25
N $\frac{1}{2}$ of N $\frac{1}{2}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20	10.00	34.37
N $\frac{1}{2}$ of N $\frac{1}{2}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20, less right-of-way	9.95	40.62
S $\frac{1}{2}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20, less right-of-way	18.52	43.75
James Foreman and Jane Doe Foreman, his wife—N $\frac{1}{2}$ of NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20, less right-of-way	18.34	46.87
N $\frac{1}{2}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20, less right-of-way	19.59	34.37
SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 20, less right-of-way	20.34	31.25
SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 20, less right-of-way	38.84	38.75
Yona Prentice and Andrew Prentice, her husband; P. J. Smith, mortgagee—S $\frac{1}{2}$ of NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 20	19.68	<del>44.25</del> 36.26
NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 20, less right-of-way	38.23	<del>44.25</del> 32.25
Agnes R. Wood (formerly Agnes R. Peterkin) and Charles R. Wood, her husband—Portion of SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 20, lying North and East of County Road, less right-of-way	12.07	25.00
Matt Nicko and Yuna (sometimes spelled Elma) Nicko, his wife; J. W. Barlow, mortgagee—Beginning at S. W. corner of NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 20; thence North 328.25 ft.; thence East 1327 ft.; thence South 328.25 ft. to point of beginning, less right-of-way	7.43	27.50
Alfred Kerola and Josephine Kerola, his wife—Beginning at a point 328.25 ft. North from S. E. corner of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 20; thence North 328.25 ft.; thence East 1327 ft. to quarter section line; thence South 328.25 ft.; thence West 1327 ft. to point of beginning, containing 10 acres, more or less, less County Road and West 15 ft. thereof; less right-of-way	9.83	20.25
Lois Haro and Hanna Haro, his wife; John W. Barlow, mortgagee—S $\frac{1}{2}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 20, less 20 ft. strip off West side thereof	5.00	12.50
John W. Barlow and Wilhelmine Barlow, his wife—Beginning at center of Sec. 20; thence South 660 ft.; thence West 660 ft.; thence North 330 ft.; thence West 660 ft.; thence North 330 ft.; thence East 1320 ft., more or less, to point of beginning, less right-of-way	14.70	31.25

Landowners and Description of Land Owned.	Number of Acres Owned.	Maximum Bounty per Acre
John W. Barlow and Wilhelmina Barlow, his wife—Gov. Lot 4, in Sec. 20, less right-of-way	37.81	29.06
Gov. Lot 5, Sec. 20, less right-of-way	20.86	18.75
R. A. Tibbetts and George W. Tibbetts, her husband—Gov. Lot 3, in Sec. 20	9.17	21.88
John W. Barlow and Wilhelmina Barlow, his wife—West 20 ft. of S½ of NW¼ of NW¼ of Sec. 20	0.151	12.50
West 15 ft. of Beginning 328.25 ft. North of N. E. corner of SW¼ of SW¼; thence North 328.25 ft.; thence East 1327 ft.; thence South 328.25 ft.; thence West 1327 ft. to point of beginning	0.113	12.50
John Anderson and Jane Doe Anderson, his wife—Gov. Lot 2, Sec. 20, less right-of-way	29.13	<del>21.88</del> 30.25
Gov. Lot 1, Sec. 20, less right-of-way	36.82	<del>22.50</del> 28.25
The following lands being in Section 21, Township 24, North Range 6 East, W. M.:		
John Anderson and Jane Doe Anderson, his wife—NW¼ of NW¼ of NW¼ of Sec. 21, less right-of-way	9.15	<del>22.50</del> 25.25
SW¼ of NW¼ of NW¼ of Sec. 21, less right-of-way	33.32	<del>22.50</del> 26.25
Thomas H. Wilson and Mary J. Wilson, his wife; Washington Savings & Loan Association, mortgagee—SE¼ of SE¼ of Sec. 21, lying West of Issaquah Creek	10.78	12.50
The following lands being in Section 17, Township 24 North Range 6 East, W. M.:		
John Anderson and Jane Doe Anderson, his wife—Portion of Gov. Lot 4, in Sec. 17, less right-of-way	21.05	<del>21.88</del> 25.25
The following lands being in Section 20, Township 24, North Range 6 East, W. M.:		
Agnes B. Wood (formerly Agnes B. Peterkin) and Charles B. Wood, her husband; Herman Peltola and Jane Doe Peltola, contractees—Portion of: Beginning at S. E. corner of NW¼ of SW¼ of Sec. 20; thence West 429 ft.; thence North 1320 ft.; thence East 429 ft.; thence South 404.5 ft.; thence West 209 ft.; thence South 626 ft.; thence East 209 ft.; thence South 289.5 ft. to point of beginning, lying North and East of County Road, less right-of-way	5.86	18.75
Herman Peltola and Jane Doe Peltola, his wife—Portion of West 330 ft. of East 759 ft. of NW¼ of SW¼ of Sec. 20, lying North and East of County Road, less right-of-way	2.40	12.50
COUNTY ROADS.		
King County, a municipal corporation—No. 941, in Sec. 20	6.795	
No. 99, in Sec. 20	1.414	
	8.209	
King County, a municipal corporation—No. 941, in Sec. 29	4.331	
No. 99, in Sec. 29	.513	
	5.044	
King County, a municipal corporation—No. 941, in Sec. 28	9.085	
No. 99, in Sec. 28	.441	
	9.526	
King County, a municipal corporation—No. 99, in Sec. 21	1.414	
	1.584	
	2.998	
Town of Issaquah, a municipal corporation—Streets in Issaquah: Superior	1.383	
Center	1.576	
Salvester	0.815	
Olson	1.579	
Bath	0.791	
	6.144	

That the land, real estate, premises and property sought to be appropriated as a right of way for said drainage system, are situated in said District in said King County, that it is necessary that there be no damage sustained by any person or corporation interested therein by reason of such appropriation and construction of said improvement, irrespective of any benefits to be derived by such person or corporation by reason of the construction of said drainage system. That the following is a description of said land, real estate, premises and property so sought to be appropriated, with the names of the respective persons and corporations owning the same, or having any interest therein as mortgagee, or otherwise appearing of record, and the amounts and estimated values of the land necessary to be taken therefor, which said amounts and values are made for each respective person through whose land said right of way is sought.

DRAINAGE DISTRICT NO. 4 OF THE COUNTY OF KING, STATE OF WASHINGTON.  
RIGHT OF WAY DESCRIPTION FOR CONDEMNATION

Charles Bennett and Anne Bennett, his wife.

A strip of land 20 feet wide through that part of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 21, Township 24 North Range 6 East, W. M., lying West of Issaquah Creek, which lies to the right of the following described center line, which begins at the Southwest corner of Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 24 North Range 6 East, W. M., running thence North along the West line of said tract 625 feet, containing 0.387 acres. Valuation \$21.52.

William W. Pickering and Jane Doe Pickering, his wife;

Royal H. Pickering;

Ernest E. Pickering and Camelia Pickering, his wife;

Socilla M. Furnell and Frank Furnell, her husband, life estate.

A strip of land 20 feet in width through the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., lying to the left of the following described center line, which begins at the Southeast corner of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., running thence on said center line North  $0^{\circ} 27' 49''$  East 600 feet. Also a strip of land 40 feet wide running through the above described tract, on the following described center line, continuing from above described point; thence running N.  $39^{\circ} 32' 30''$  West 1128 feet to a point on the North line of said tract 876 feet West of the Northeast corner thereof, said corner being the  $\frac{1}{4}$  corner common to Sections 28 and 21, Township 24 North, Range 6 East, W. M., containing 1.311 acres. Valuation \$78.66.

William Pickering and Jane Doe Pickering, his wife;

Royal H. Pickering;

Ernest E. Pickering and Camelia Pickering, his wife;

Socilla M. Furnell and Frank Furnell, her husband, Life Estate.

A strip of land 40 feet wide through the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the South line of said tract 876 feet west of the Northeast corner thereof; running thence on said center line North  $39^{\circ} 32' 30''$  West 565 feet to a point on the West line of said tract 357 feet North of the Southwest corner thereof, containing 0.619 acres. Valuation \$31.14.

William W. Pickering and Jane Doe Pickering, his wife;

Royal H. Pickering;

Ernest E. Pickering and Camelia Pickering, his wife;

Socilla M. Furnell and Frank Furnell, her husband, Life Estate.

A strip of land 40 feet wide through the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., the center line of which begins at a point 357 feet north of the Southeast corner thereof; running thence North  $39^{\circ} 32' 30''$  W. 549 feet. Also a strip of land 42 feet wide running through the above described tract, on the following described center line, continuing from the above described point, North  $55^{\circ} 41' 30''$  West, 1054 feet to a point on the West line of said tract 45 feet south of the Northwest corner thereof, containing 1.429 acres. Valuation \$228.12.

Fred S. Tibbells and Nora (Sometimes known as Elvora) Tibbells, his wife;

James Foreman, Mortgagee.

A strip of land 42 feet wide through the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point 45 feet South of the Northeast corner thereof, running thence on said center line North 55° 41' 20" West 78.00 feet to a point on the north line of said tract 63.50 feet West of the Northeast corner thereof, containing said acres. Valuation \$115.00.

Fred S. Tibbells and Nora (Sometimes known as Elvora) Tibbells, his wife;

James Foreman, Mortgagee.

A strip of land 42 feet wide through the South  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the South line of said tract 235 feet from the Southeast corner thereof, running thence on said center line North 55° 41' 20" West 715.00 feet. Also a strip of land 44 feet wide running through the above tract, on the following described center line continuing from the above described point North 55° 41' 20" West, 420 feet to a point on the North line of said tract 1008 feet West of the Northeast corner thereof. Also a strip of land 40 feet wide through the above tract, the center line of which begins at the above described 716.00 feet point; running thence on said center line south 400 feet to a point on the south line of said tract 654 feet West of the Southeast corner thereof, containing 1.481 acres. Valuation \$296.20.

Also a strip of land from said point south 650 feet, through the east half (NE  $\frac{1}{2}$ ) of the southeast quarter (SE  $\frac{1}{4}$ ) of the Southeast quarter (SE  $\frac{1}{4}$ ) of section twenty-one (21) to a point 600 feet south and 723 feet east of the northeast corner of said quarter section, containing .606 acres at \$2500.00 per acre. Valuation \$1515.00.

James Foreman and Jane Doe Foreman, his wife.

A strip of land 44 feet wide through the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the West line of said tract 235 feet North of the Southeast corner thereof; running thence on said center line North 55° 41' 20" West 698 feet to a point on the North line of said tract 578 feet west from the Northeast corner thereof. Also a strip of land 40 feet wide through the North  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the North line 617 feet West from the Northeast corner thereof, running thence on said center line South 26° 45' East 690 feet to a point on the South line of said tract 348 feet West from the Southeast corner thereof. Also a strip of land 22 feet wide, through the above described tract, lying to the East of the following described center line, commencing at the Southwest corner of said tract; thence running North on West line 636 feet to the Northwest corner thereof, containing 1.559 acres. Valuation \$331.80.

James Foreman and Jane Doe Foreman, his wife.

A strip of land 44 feet wide through the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the South line of said tract 578 feet West of the Southeast corner thereof; running thence on said center line North 55° 41' 20" West 658 feet to a point on the West line of said tract 500 feet North of the Southwest corner thereof. Also a strip of land 40 feet wide through the above described tract, the center line of which begins at a point on the South line of said tract 617 feet West from the Southeast corner thereof, running thence on said center line North 26° 45' West 45 feet to a point on the Main Ditch. Also a strip of land 22 feet wide through the above described tract, lying to the right of the following described center line, which begins at the Southwest corner of said tract; thence running North on West line 500 feet to its connection with Main Ditch, containing 1.197 acres. Valuation \$115.00.

John W. Barlow and Wilhelmina Barlow, his wife.

A strip of land 48 feet wide through Government Lot 4, Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the East line of said tract 500 feet North of the Southeast corner thereof; running thence on said center line North 55° 41' 20" West 1390 feet to a point on the shore line of Lake Hammamish 1284 feet North, and 1177 feet West of the Southeast corner of the above described tract. Also a strip of land 22 feet wide through the above described tract, lying to the left of the following described center line which begins at the Southeast corner of said tract, thence running north on east line thereof 500 feet to its connection with main ditch, containing 1.783 acres. Valuation \$356.60.



Yena (sometimes spelled Hena) Prentice and Andrew Prentice, her husband.

A strip of land 44 feet in width through the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 29, Township 24 North, Range 6 East, W. M., the center line of which begins at a point which bears from  $\frac{1}{4}$  corner common to Sections 29 and 30, Township 24 North, Range 6 East, W. M., South  $66^{\circ} 12' 30''$  East, 702.38 feet, thence running North  $22^{\circ} 16' 35''$  West 310 feet to a point on the North line of said tract 525.18 feet east of the Northwest corner thereof, containing 0.313 acres. Valuation \$31.30.

Yena (sometimes spelled Hena) Prentice and Andrew Prentice, her husband.

P. J. Smith, Mortgagee.

A strip of land 44 feet wide through the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the South line of said tract 525.18 feet east of the Northwest corner thereof, running thence on said center line North  $20^{\circ} 35' 35''$  West 885 feet; North  $20^{\circ} 35' 05''$  West 480 feet; also a strip of land 22 feet wide through the above described tract lying to the right of the following described center line, continuing from the end of the last described course West  $1^{\circ} 11' 25''$  East 70 feet to the Northwest corner of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., containing 1.413 acres. Valuation \$141.30.

Yena (sometimes spelled Hena) Prentice and Andrew Prentice, her husband.

P. J. Smith, Mortgagee.

A strip of land 22 feet wide through the South  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., lying to the East of the following described center line which begins at the Southwest corner of said tract; thence running North on West line 636 feet to the Northwest corner of above described tract, containing 0.312 acres. Valuation \$31.25.

Agnes H. Wood (formerly Agnes B. Peterkin) and Charles B. Wood, her husband.

A strip of land 22 feet wide through the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., lying to the West of the following described center line which begins at a point 90 feet South of the Northeast corner; running thence North 80 feet to the Northeast corner thereof, containing .04 acres. Valuation \$4.00.

Matt Nikko and Olina (sometimes spelled Klöns) Nikko, his wife.

J. W. Harlow, Mortgagee.

A strip of land 22 feet wide through the South  $\frac{1}{2}$  of South  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., lying to the left of the following described center line, beginning at the Southeast corner of said tract; thence running North on East line 328.25 feet to the Northeast corner of above described tract, containing .166 acres. Valuation \$16.60.

Alfred Karola and Josephine Karola, his wife.

A strip of land 22 feet wide through the North  $\frac{1}{2}$  of the South  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., lying to the West of the following described center line, beginning at the Southeast corner of said tract; thence running North on East line 328.25 feet to the Northeast corner thereof, containing .166 acres. Valuation \$16.60.

John W. Harlow and ~~John W.~~ Harlow, his wife.

A strip of land 22 feet wide through the North  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., lying to the West of the following described center line, beginning at the Southeast corner of said tract; thence running North on East line 604 feet to the Northeast corner thereof, containing .305 acres. Valuation \$30.50.

William W. Pickering and ~~Jane~~ Dora Pickering, his wife.

Royal H. Pickering.

Ernest H. Pickering and Camellia Pickering, his wife.

Serilla M. Farnell and Frank Farnell, her husband, Life Estate.

A strip of land 50 feet wide through the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 28, Township 24 North, Range 6 East, W. M., the center line of which begins at a point which bears South  $48^{\circ} 08'$  East, 126.66 feet from the Section corner common to Sections 28, 29, 21 and 20, Township 24 North, Range 6 East, W. M., and running thence North  $1^{\circ} 19' 34''$  West, 832 feet to a point on the North line of said tract 405 feet West of the Northeast corner thereof, containing .573 acres. Valuation \$28.65.

William W. Pickering and Jane Doe Pickering, his wife;

Rosal R. Pickering;

Ernest K. Pickering and Camelia Pickering, his wife;

Sevilla M. Funnell and Frank Funnell, her husband, Life Estate.

A strip of land 30 feet wide through the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., the center line of which begins on the South line of said tract 405 feet West of the Southeast corner thereof, running thence North  $1^{\circ} 19' 34''$  West 1320 feet to a point on the North line of said tract 442 feet West of the Northeast corner thereof, containing .909 acres. Valuation \$136.35.

William W. Pickering and Jane Doe Pickering, his wife;

Rosal R. Pickering;

Ernest K. Pickering and Camelia Pickering, his wife;

Sevilla M. Funnell and Frank Funnell, her husband, Life Estate.

A strip of land 30 feet wide through the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., the center line of which begins on the South line of said tract 442 feet West of the Southeast corner thereof, running thence North  $1^{\circ} 19' 34''$  West 1320 feet to a point on the North line of said tract 495 feet West of the Northeast corner thereof, containing .909 acres. Valuation \$181.80.

John Anderson and Jane Doe Anderson, his wife;

A strip of land 40 feet wide through the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., the center line of which begins on the South line of said tract 495 feet West from the Southeast corner thereof, running thence North  $1^{\circ} 19' 34''$  West 368 feet; North  $37^{\circ} 09' 26''$  West 1193 feet to a point on the North line of said tract 90 feet East from the Northwest corner thereof, containing 1.433 acres. Valuation \$286.60.

A strip of land 40 feet wide through the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 21, Township 24 North, Range 6 East, W. M., the center line of which begins on the South line of said tract 80 feet east from the Southwest corner, North  $37^{\circ} 09' 26''$  West 100 feet to a point on the West line of said tract 118 feet North of the Southwest corner thereof, containing .0918 acres. Valuation \$18.36.

A strip of land 40 feet wide through lot 4, Section 17, Township 24 North, Range 6 East, W. M., the center line of which begins on the South line 23 feet West from the Southeast corner of said tract, running thence North  $66^{\circ} 12' 26''$  West 252 feet to a point on the Shore of Lake Sammamish 253 feet West and 100 feet North from the Northeast corner thereof, containing .231 acres. Valuation \$17.35.

James Foreman and Jane Doe Foreman, his wife;

A strip of land 40 feet wide in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point 534 feet South and 362 feet West from the Northeast corner thereof, running thence North  $41^{\circ} 43' 00''$  West, 722 feet to a point on the North line of said tract 125 feet east of the Northwest corner thereof, containing .663 acres. Valuation \$132.60.

John Anderson and Jane Doe Anderson, his wife;

A strip of land 40 feet wide through the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins on the East line of said Tract 118 feet North of the Southeast corner thereof, running thence North  $37^{\circ} 09' 26''$  West, 1012 feet, thence curving to the left with a 12 degree curve through 29 degrees and 3 minutes of curvature 242.08 feet, thence North  $66^{\circ} 12' 26''$  West 556 feet to a point on the West line 10 feet South from the Northwest corner thereof.

Also a strip of land 40 feet wide through the above described tract, the center line of which begins on the South line 135 feet East of the Southwest corner thereof, running thence North  $41^{\circ} 43'$  West 283 feet to a point on the West line of said tract 215 feet North of the Southwest corner thereof, containing 1.916 acres. Valuation \$284.20.

John Anderson and Jane Doe Anderson, his wife;

A strip of land 40 feet wide through the Government Lot 2, Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point 10 feet South from the Northeast corner of said tract, running thence North  $66^{\circ} 12' 26''$  West, 25 feet to the North line of said tract to a point 23 feet West from the Northeast corner thereof.

Also a strip of land 40 feet wide through the above described tract, the center line of which begins at a point 215 feet North of the Southeast corner thereof, running thence North  $41^{\circ} 43'$  West 1915 feet to a point on the Shore of Lake Sammamish 352 feet South and 500 feet West from the Northeast Corner thereof, containing .955 acres. Valuation \$35.50.

Herman Peltola and Jane Doe Peltola, his wife.

A strip of land 50 feet wide through the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the East line, 404.5 feet South of the Northeast corner, running thence North 53° 07' 50" West 260.50 feet to a point in said tract 404.5 feet South and 209 feet West from the Northeast corner thereof, containing .18 acres. Valuation \$13.50

Agnes B. Wood (formerly Agnes B. Peterkin) and Charles B. Wood, her husband

Herman Peltola and Jane Doe Peltola, Contractees.

A strip of land 50 feet wide through the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point in said tract 404.5 feet South and 209 feet West of the Northeast corner thereof, running thence North 40° 59' 20" West 192.10 feet; North 23° 09' 10" East 165.32 feet; North 8° 29' 55" East 87.96 feet; North 27° 30' 40" West 26.00 feet to a point on the North line of said tract 280 feet West of the Northeast corner thereof, containing .325 acres. Valuation \$24.17.

John W. Barlow and Wilhelmina Barlow, his wife.

A strip of land 50 feet wide through Government Lot 5, in Section 20, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the South line of said tract 280 feet West of the Southeast corner thereof, running thence North 27° 30' 40" West 76.20 feet; North 16° 31' 10" West, 123.10 feet; North 8° 37' 00" West 131.50 feet; North 40° 09' 20" West 41.87 feet; North 17° 28' 30" East 113.22 feet; North 33° 58' 00" East 197.06 feet; North 32° 04' 10" East 489.70 feet to a point on said Government Lot 1020 feet North and 532 feet West of the Southeast corner thereof, containing .677 acres. Valuation \$67.70.

Herbert S. Upper, a bachelor;

C. B. Berry and Jane Doe Berry, his wife;

H. Bram and Jane Doe Bram, his wife;

H. M. Johnson and Jane Doe Johnson, his wife;

E. J. Anderson and Jane Doe Anderson, his wife;

George E. Brown and Jane Doe Brown, his wife.

A strip of land 35 feet wide through Block 2 of Herbert S. Upper's Third Addition to Issaquah, in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 28, Township 24 North, Range 6 East, W. M., the center line of which begins at the Southeast corner of Lot 11 of said Block, running thence North 21° 16' 30" West 761.68 feet to a point on the North line of Lot 6 of said Block, 156.37 feet East of the Northeast corner thereof, containing .437 acres. Valuation \$43.70.

Superior Coal and Improvement Company.

Victor Vigelius and Jane Doe Vigelius, his wife, Claimants.

A strip of land 20 feet wide through the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 28, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the North line of Lot 6, Block 2, of Herbert S. Upper's Third Addition to Issaquah, 156.37 feet East from the Northeast corner of said lot, running thence North 21° 16' 30" West 72.72 feet; thence curving to the right with a 12 degree curve through 12 degrees 15 minutes of curvature from a tangent parallel to and 10 feet South of the North line of the Superior Coal and Improvement Company's right-of-way, which bears north 89° 45' 04" West 102.03 feet to a point on the North line of above described tract, 420 feet East from the Northwest corner thereof, containing .080 acres. Valuation \$9.00.

Superior Coal and Improvement Company;

Victor Vigelius and Jane Doe Vigelius, his wife, Claimants.

Also a strip of land 20 feet wide through the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 28, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the South line of said tract 420 feet East from the Southwest corner thereof; running thence curving to the right with a 12 degree curve through 31 degrees and 46 minutes of curvature 264.72 feet; thence along a tangent to said curve North 44° 31' 04" West 265 feet to a point on the West line of said tract 312 feet North of the Southwest corner thereof, containing 0.243 acres. Valuation \$12.15.

Superior Coal and Improvement Company;

Victor Vigelinus and Jane Doe Vigelinus, his wife, Claimants.

Also a strip of land 20 feet wide in the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 28, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the east line of said tract 3 1/2 feet North of the Southeast corner thereof; running thence North 44° 31' 04" West 35 feet; thence curving to the left with a 12 degree curve through 47 degrees of curvature a distance of 391.66 feet; thence South 44° 14' 50" West 30.80 feet; South 71° 48' 40" West 73.68 feet; South 67° 54' 50" West 74.47 feet; South 62° 31' 30" West 422.66 feet to a point in said tract 404 feet West and 215 feet North of the Southwest corner thereof, containing 0.472 acres. Valuation \$26.60.

Superior Coal and Improvement Company;

Victor Vigelinus and Jane Doe Vigelinus, his wife, Claimants.

A strip of land 20 feet wide, through the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 28, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the North line of Lot 6, Block 2, Herbert S. Upper's Third Addition to Issaquah, 156.37 feet East from the Northeast corner of said lot; running thence North 21° 16' 30" West 72.72 feet; South 89° 45' 04" East 801.03 feet to a point on the East line of said tract 10 feet South from the Northeast corner thereof, containing 0.367 acres. Valuation \$18.35.

Superior Coal and Improvement Company;

Victor Vigelinus and Jane Doe Vigelinus, his wife, Claimants.

Also a strip of land 20 feet wide, through the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 28, Township 24 North, Range 6 East, W. M., the center line of which begins at a point on the West line of said tract 10 feet South from the Northwest corner thereof; running thence South 89° 45' 04" East 33 feet; South 0° 21' 40" West 70 feet to a point in said tract 7 feet West of the Northwest corner of Lot 5, Block 6, of Herbert S. Upper's Second Addition to Issaquah, containing 0.043 acres. Valuation \$2.15.

King County, a Municipal Corporation.

A strip of land 25 feet wide through the streets of Herbert S. Upper's Second Addition to Issaquah, in the Southwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 28, Township 24, North Range 6 East, W. M., the center line of which begins at a point 7 feet South of the Southeast corner of Lot 4, of Block 4, of Herbert S. Upper's Second Addition to Issaquah; thence running along Sylvester Street North 89° 45' 22" West 827 feet; thence North 0° 27' 40" East 1211.72 feet along Center Street to a point in said tract 7 feet West from the Northwest corner of Lot 5, Block 5, Herbert S. Upper's Second Addition to Issaquah.

Right-of-way for Main Drainage Ditch, across County Road 35 feet wide on line between Sections 20 and 21, Township 24 North, Range 6 East, W. M., known as Road No. 99.

Right-of-way for Pickering Drainage Ditch across County Road 35 feet wide, on Center line of Section 21, Township 24 North, Range 6 East, W. M., known as Road No. 99.

Width of right-of-way required 10 feet, or enough to construct standard culvert on.

~~SHORETT, MULAREN & SHORETT,~~

Attorneys for Petitioners.

~~Office Address:~~

~~14-15 New York Block,~~

~~Seattle, King County, Washington.~~

1 NOW, THEREFORE, on application by the attorneys for the  
2 petitioners herein for a judgment and decree in accordance with said  
3 verdicts and stipulation, it is hereby ORDERED, ADJUDGED and  
4 DECREED that the property herein sought to be appropriated and con-  
5 demned as described in said verdicts is required and necessary for  
6 the construction and maintenance of said proposed improvement, and  
7 the same is hereby condemned and appropriated to and for the use of  
8 said Drainage District as necessary and required for said improve-  
9 ment, subject however to said written offer and stipulation above  
10 referred to, and that there are no damages sustained by any person  
11 or corporation owner of or interested in any of said lands or other  
12 property so appropriated and condemned by reason of said appropri-  
13 ation and use thereof for said improvement.

14 And it is further ORDERED, ADJUDGED and DECREED that the  
15 defendants named in said verdicts as being owners of or persons  
16 interested in the respective pieces of property herein condemned,  
17 do have and recover of and from said Drainage District the respective  
18 amounts so found by said jury in said verdicts as and for compensa-  
19 tion for the value of the land or other property so taken, appro-  
20 priated and condemned, together with their costs herein, and the  
21 said Commissioners of said District are hereby directed to draw their  
22 warrant on the County Treasurer for the respective amounts so awarded  
23 to said respective persons for the compensation so awarded payable  
24 out of the funds of said District.

25 It is further ORDERED, ADJUDGED and DECREED that the  
26 maximum benefits to be derived by the owners of the land, real  
27 estate, premises and other property in said District by reason of  
28 the construction of said proposed improvement are as shown in the  
29 said verdicts.

30 It is hereby further ORDERED that upon the entry of this

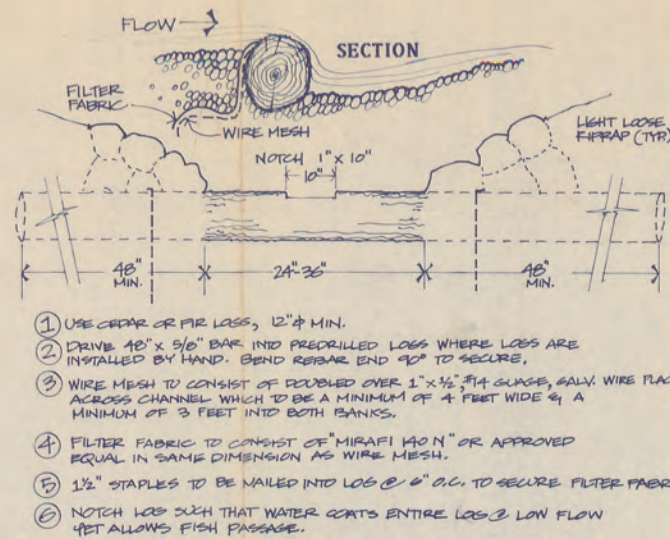
1 judgment, the Clerk of this Court shall immediately prepare a  
2 transcript which shall contain a list of the names of all the  
3 persons and corporations benefited by said improvement and the  
4 amount of benefit derived by each respectively, together with a  
5 list of the lands benefited by said improvement belonging to each  
6 person and corporation, and shall duly certify the same and there-  
7 upon file the same with the Auditor of said King County, who shall  
8 immediately enter the same upon the tax rolls of his office as  
9 provided by law for the entry of other taxes.

10 It is further ORDERED, ADJUDGED and DECREED that  
11 there be and is hereby allowed to said District its costs and  
12 disbursements herein, together with all expenses which may have  
13 been allowed or incurred by the said Board of Commissioners of  
14 said District, as compensation for Engineering or Legal Services  
15 rendered in relation to the proceedings herein.

16  
17 DONE in open Court this 14<sup>th</sup> day of August,  
18 1916.

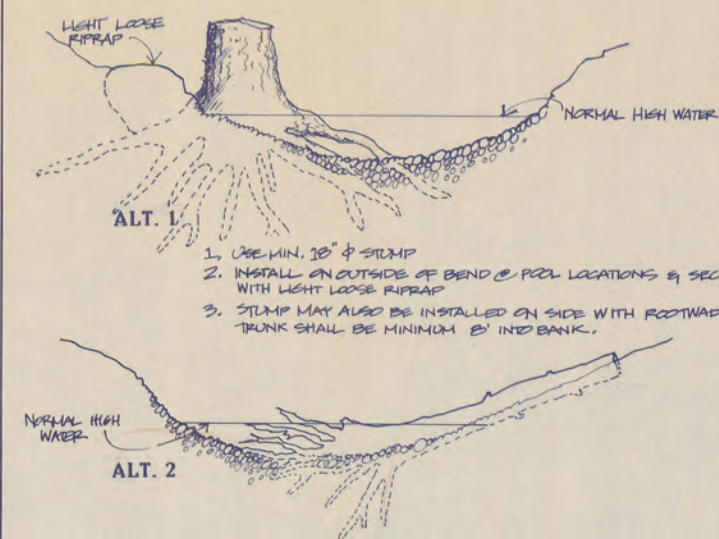
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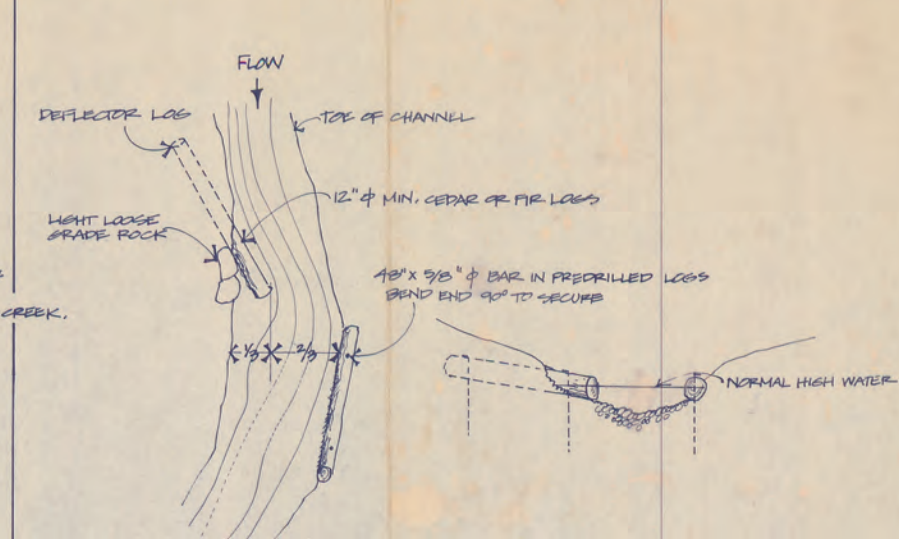
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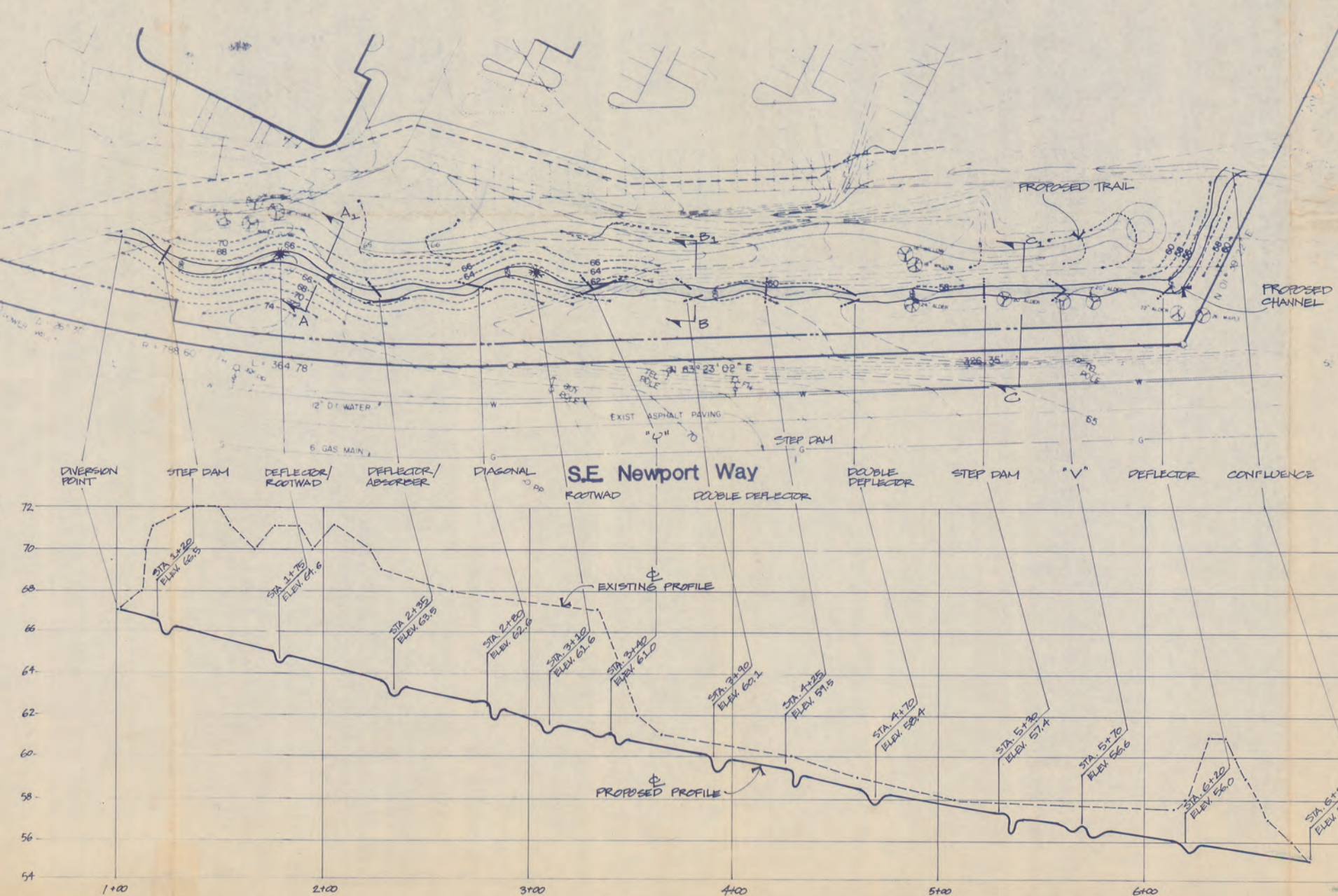
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LOG DEFLECTOR/ ABSORBER

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PLAN

PROFILE

- CONSTRUCTION NOTES
1. All work within the ordinary high water mark of channel will require a hydraulic project approval from the State Department of Fisheries or Department of Game. This permit is to be on-site at all times during construction.
  2. All construction work will require direction from stream rehabilitation consultant or owner's representative.
  3. Undisturbed plugs, at least 10 feet long, should be left at upstream and downstream ends of new channel to prevent breaching.
  4. All construction of channel from Station 3+60 to Station 6+15 to be done with hand labor and/or bobcat.
  5. Diversion to occur by first removing downstream plug and then the upstream one.

BASE SHEET BY BARGHAUSEN CONSULTING ENGINEERS, INC.  
(CONTOUR INTERVAL 1' ON BASE)

CITY OF ISSAQUAH  
DEC 2 1987  
RECEIVED

Rasmussen and Huse  
Consulting Engineers  
605 Market St.  
Kirkland, Wa. 98033  
12061 822 4886



**The Watershed Company**  
... specializing in streams  
1029 Market Street, Suite C, Kirkland, WA 98033 (206) 822-5242  
12th and Newport Building - Phase II  
Channel Relocation, Vegetation and Trail Plan  
PREPARED FOR: Cabot, Cabot and Forbes  
3305 160th Avenue SE, Suite 150  
Bellevue, Washington

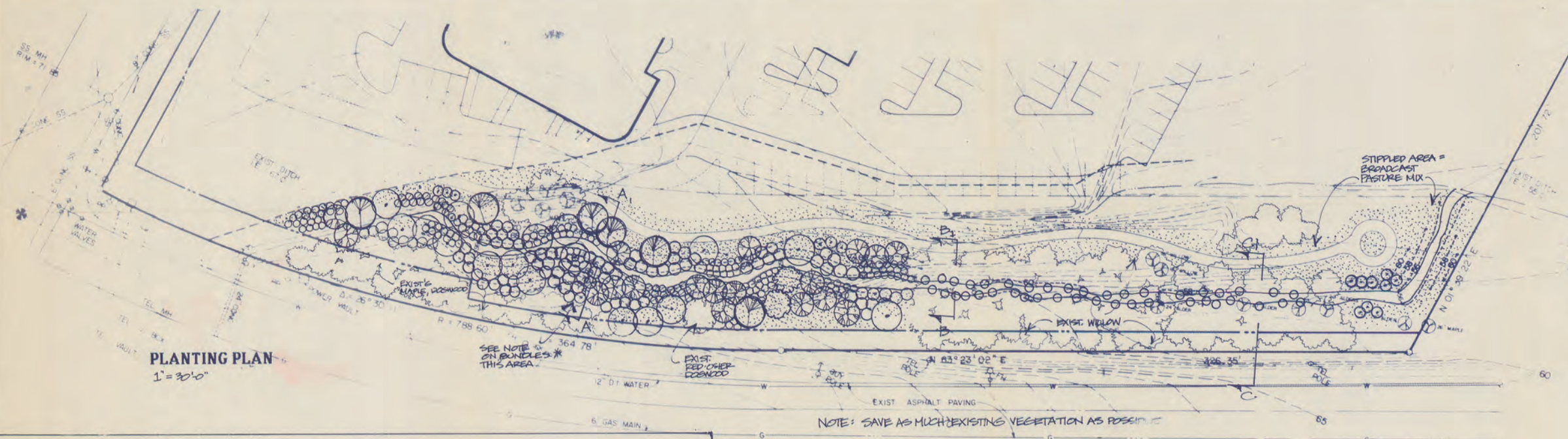
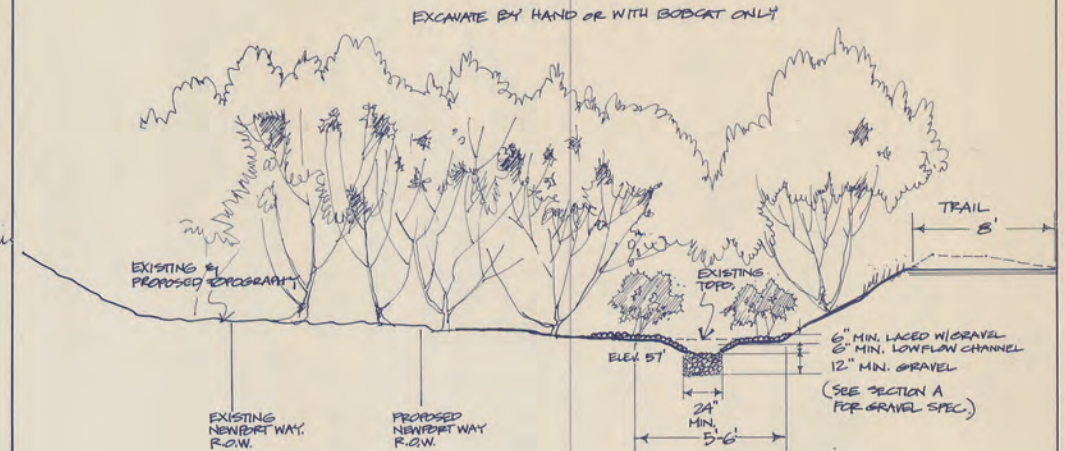
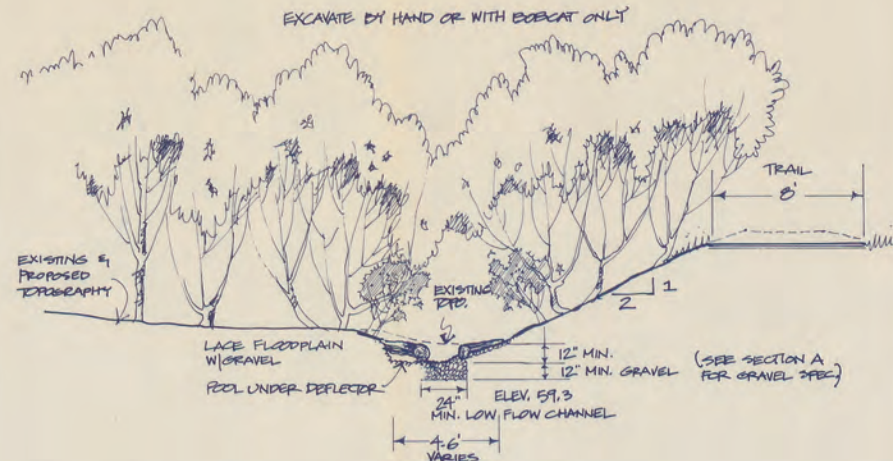
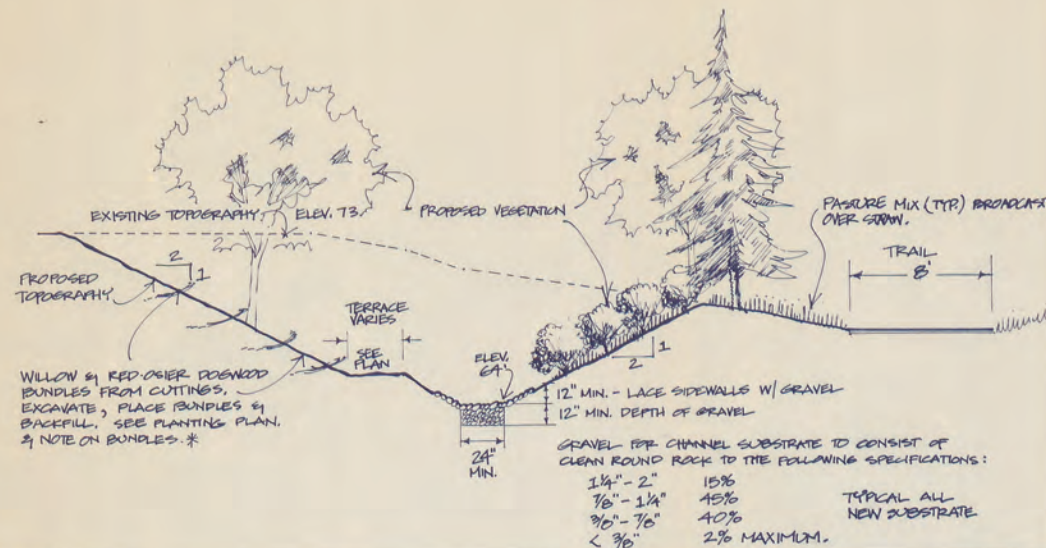
DATE: 10/26/86  
DRAWN: JOHN PARKER  
DESIGNED: ANN WAT  
SHEET 1 OF 2



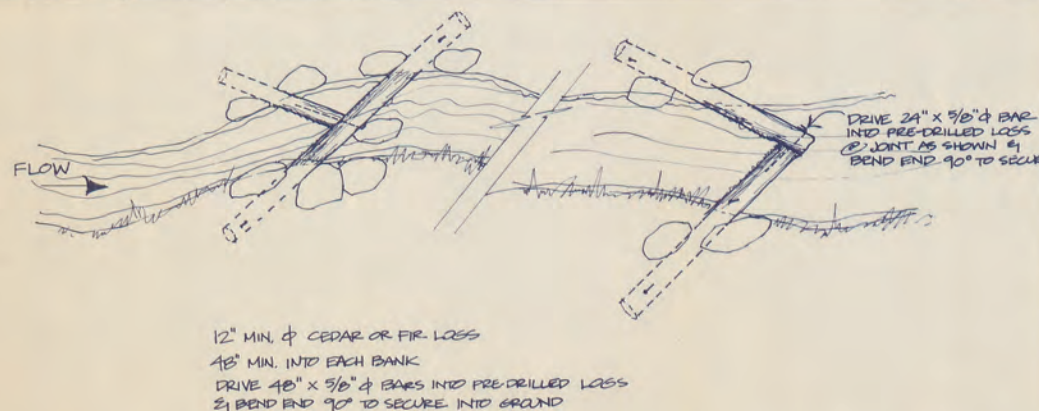
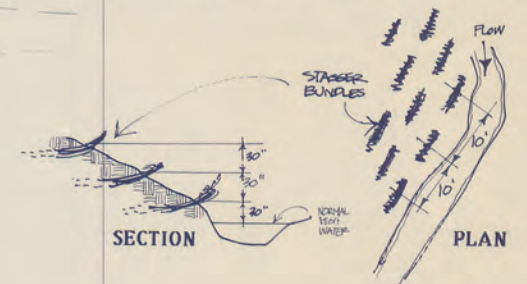
Vicinity Map

PLAN & PROFILE





\* NOTE ON BUNDLES:  
ON RIGHT (SOUTH) BANK OF SECTION A (TYP) INSTALL SWAMP WILLOW / RED OSIER DOGWOOD BUNDLES IN TEST PLOT. (SEE DIAGRAM BELOW FOR LAYOUT). USE MINIMUM OF 10 BUNDLES. EACH BUNDLE TO CONSIST OF ~50 FRESHLY CUT WHIPS, ~18" LONG LAID FLAT, 1 1/2" WIDE. EXCAVATE HOLE, COVER BUNDLES WITH ~6" OF SOIL, AND LEAVE SEVERAL INCHES OF STEP DAYLIGHTING AT A SLIGHT UPWARD ANGLE.



S.E. Newport Way

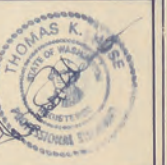
SYMBOL	SCIENTIFIC NAME	QUANTITY	COMMON NAME	SIZE	CONDITION
	THUJA PLICATA	6	RED CEDAR	12-15'	B/B
	ACER MACROPHYLLUM	18	BIG LEAF MAPLE	10-12'	B/B
	ACER CIRCINATUM	18	VINE MAPLE	5-6'	B/B
	RED OSIER DOGWOOD OR SWAMP WILLOW BUNDLE (SEE NOTE)	50 (CORNUS STOLONIFERA OR BUNDLES (SEE NOTE)		2-5'	B/B / CONT.
	ROSA RUBOSA	100	WILD ROSE	2-4'	B/B CONT.
	RUBUS SPECTABILIS	40	SALMONBERRY	2-4'	"
	RUBUS BRACTEATUS	40	SNOWBERRY	2-4'	"
	15 RED CURRANT			4-6'	"
	PASTURE MIX	30	RYE, BLUEGRASS, & WHITE CLOVER		BROADCAST OVER STRAW

"V" AND "Y" LOG STRUCTURES

no scale

PLANTING SCHEDULE

Rasmussen and Huse  
Consulting Engineers  
605 Market St.  
Kirkland, Wa. 98033  
(206) 822 4886



The Watershed Company  
... specializing in streams  
1029 Market Street, Suite C, Kirkland, WA 98033 (206) 822-5242

12th and Newport Building - Phase II  
Channel Relocation, Vegetation and Trail Plans

PREPARED FOR: Cabot, Cabot and Forbes  
3305 160th Avenue SE, Suite 150  
Bellevue, Washington

DATE: 10/26/05  
DRAWN: JOHN PARKER  
REVIEWED: ANN WAY  
SHEET 2 OF 2



## EXHIBIT 7

### BEFORE THE HEARING EXAMINER FOR THE CITY OF ISSAQUAH

In the Matter of the Appeal of the	)	<b>No. SDP19-00001</b>
	)	
<b>Issaquah Environmental Council</b>	)	<b>Evergreen Ford and Lincoln Appeal</b>
	)	<b>SDP Appeal</b>
	)	
	)	<b>FINDINGS, CONCLUSIONS,</b>
<u>Of a Site Development Permit</u>	)	<b>AND DECISION</b>

#### SUMMARY OF DECISION

This appeal involves a challenge to site development permit (SDP) approved by the City of Issaquah Development Commission (Commission) for the proposed development of a new automotive sales and service facility at 22975 SE 66th Street.<sup>1</sup> The Issaquah Environmental Council (IEC) alleges that the Commission erred, on several grounds, in issuing the SDP. Because substantial evidence in the record supports the Commission decision, the appeal is **DENIED**.

#### SUMMARY OF PROCEEDINGS

##### Hearing Date:

The Hearing Examiner convened a closed record appeal on the Site Development Permit on December 9, 2019. The record was left open until December 30, 2019, to allow the parties to submit closing briefs.<sup>2</sup>

Attorney David A. Bricklin represented the Appellant.  
Attorneys Wright Noel and Stewart Carson represented the Applicant  
Attorney Jim Haney represented the City

##### Exhibits:

The exhibits in Attachment A were admitted into the record. Attachment A also includes a list of pleadings received by the Hearing Examiner related to the SDP appeal, as well as various orders and pre-hearing decisions produced by the Hearing Examiner in relation to the SDP appeal.

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<sup>1</sup> The Issaquah Environmental Council also appealed the Mitigated Determination of Nonsignificance (MDNS) issued for the proposal under the State Environmental Policy Act (SEPA). The SEPA appeal (No. SEP19-00004) has been decided in a separate decision issued concurrently with this appeal decision, following a consolidated hearing as required by Washington Administrative Code 197-11-680(3)(v) and Issaquah Municipal Code (IMC) 18.04.256.

<sup>2</sup> IMC 18.04.250 allows the Hearing Examiner 90 days to issue a decision following a SEPA appeal where, as here, the decision is consolidated with an appeal under SEPA.

## **FINDINGS**

### **Background**

1. On March 5, 2019, Evergreen Ford Lincoln (Applicant) submitted a site development permit (SPD) application to construct, in phases, an automotive dealership and service facility, with associated improvements, on a 3.92-acre site. The North Fork of Issaquah Creek (North Fork), a perennial stream with salmonids, crosses the northern edge of the site and an unnamed tributary of the North Fork (Tributary) is located off-site just south of the property, within right-of-way owned by the Washington State Department of Transportation (WSDOT). The Applicant would reduce the 100-foot stream buffer associated with the North Fork by 25 percent, under Issaquah Municipal Code (IMC) 18.10.790, as part of development. As mitigation for the buffer reduction, the Applicant would enhance 19,570 square feet of buffer adjacent to the North Fork. As is explained in greater detail below, the City does not consider the Tributary a regulated critical area under the municipal code because it fails to meet the definition of a “stream” under IMC 18.10.390. The property is located at 22975 SE 66th Street.<sup>3</sup> *Exhibit C-1; SDP 0984 - 0998.*
2. The currently vacant project site formerly housed a dog kennel and consists primarily of open grassy fields with a mix of mostly tall deciduous trees growing in groups along the parcel boundaries. In October of 2017, WSDOT completed a realignment of the North Fork through the subject property as part of a fish passage/culvert replacement and habitat improvement project. This created new habitat on the subject property and reintroduced an additional mile of habitat upstream of the site on the North Fork to native and migratory fish. The realignment project also included realignment of the off-site Tributary. WSDOT planted native trees, shrubs, and groundcover plants above the ordinary high water mark (OHWM) of the North Fork and the Tributary, as part of the realignment project. Some of the mitigation plantings were installed within the WSDOT right-of-way; some were planted on the subject property. *Exhibit C-1.b; SDP 0224 – 0258; SDP 0288 – 0293.*

### **Initial Technical Review**

3. Extensive review of the proposal began shortly after the Applicant submitted its initial project plans, resulting in: preparation of a Critical Areas Study (CAS), dated April 8, 2019, prepared by O’Neill Service Group (OSG), on behalf of the Applicant, and revisions to the CAS and project plans, in response to comments from the City’s third party environmental consultant, The Watershed Company, on several occasions. Ultimately, on May 16, 2019, the Applicant submitted a Revised CAS, prepared by OSG. The Revised CAS incorporated a stream delineation study of the North Fork, as requested by The Watershed Company. In addition, the Revised CAS increased the number of native plants that would be installed in the reduced stream buffer abutting the North Fork

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<sup>3</sup> The property is identified by Tax Assessor Parcel No. 2724069086. *Exhibit C-5.*

from 1,027 to 1,577 and increased the amount of woody debris from two to four pieces, consistent with suggestions from The Watershed Company. On June 4, 2019, The Watershed Company provided a third memorandum assessing the Revised CAS, which generally determined that it would meet municipal requirements. *Exhibit C-1; SDP 0219 - 0491.*

#### Initial Review by Rivers and Streams Board

4. The City's Rivers and Streams Board (Board), which is tasked with "advising the Mayor and City Council of actions necessary" to "protect, preserve, and enhance the water quality in the waterways of Issaquah, and to protect the fish, birds, and mammals that depend upon such aquatic environments," under IMC 18.03.400, first reviewed the proposal on March 26, 2019. At that time, however, the Applicant had not yet submitted its CAS. Accordingly, the Board reviewed the proposal again on June 4, 2019. Following discussion, including discussion of the Tributary and whether it would meet the definition of a stream under the municipal code, the Board did not resolve whether to recommend approval of the buffer reduction. *Exhibit C-1.f.*

#### Initial Review by Development Commission

5. The City's Development Commission (Commission), which has authority to review and approve SDP applications under IMC 18.04.430(B) and -.450(A), began review of the proposal on May 1, 2019, at a duly noticed public meeting. At the meeting, several comments were received about environmental impacts from the proposal, including concerns over tree retention and density, and the proposed stream buffer reduction along the North Fork. The meeting was continued to August 21, 2019, to allow for the submission of additional information and public comment. At the continued meeting, several members of the public expressed concern, primarily over an additional topic: whether the Tributary should be protected as a critical area under the municipal code because it provides habitat for salmonids. City staff conveyed to the Commission that, in its assessment, the Tributary would not be defined as a "stream" under the municipal code (IMC 18.10.390) because it does not receive water from natural sources and, because of this, it would not be regulated as a critical area. Staff noted, however, that additional protection could be provided to the Tributary under the City's SEPA authority. Ultimately, the Commission unanimously decided to remand the proposal to City staff for further study, including further analysis of issues associated with the Tributary. *SDP 0001 - 0370.*

#### Additional Technical Review

6. In response to the remand, OSG, along with SCJ Alliance, prepared a memorandum, dated September 11, 2019, assessing the water sources of the Tributary (Water Source Memorandum), on behalf of the Applicant. The Water Source Memorandum specifically focused on whether the Tributary "was draining/conveying water from natural sources or human-built stormwater systems." Following review of available information from

WSDOT (related to the stream realignment) and from the Issaquah Highlands Comprehensive Storm Drainage System Maps, a topographic survey, and multiple field visits, OSG and SCJ Alliance determined that two drainage basins contribute surface water to the Tributary, with approximately 75 percent of stormwater runoff entering the Tributary from human-built stormwater systems serving the Issaquah Highlands development and the remaining 25 percent of stormwater runoff entering the Tributary from portions of Lakeside, Cadman, and the surrounding commercial and industrial developments. The Water Source Memorandum ultimately determined that “the only water sources draining to the Tributary are human-built stormwater systems” and that no “natural sources were identified as draining to the Tributary.” Because of this, the Tributary would not be regulated as a stream under IMC 18.10.390. *Exhibit C-1.c.*

7. OSG prepared an additional memorandum, dated September 25, 2019, assessing the proposal’s “potential direct or indirect impact on the small tributary to the North Fork of Issaquah Creek,” especially in relation to whether the proposal would have a “significant direct or indirect adverse impact on those functions and services that benefit fish and wildlife” (Fish Habitat Memorandum). The Fish Habitat Memorandum stressed that the Tributary “does not meet the definition of a stream under the Issaquah Municipal Code” but, despite this, “is connected to the broader watershed through its surface connection to the North Fork of Issaquah Creek and, along with its riparian buffer, may provide ecological services and functions that benefit fish and wildlife.” The Memorandum addressed water quality functions; enhanced stormwater treatment that would occur on-site, including pollutant infiltration; fine sediment control; attenuated flow rates; the dependability of the proposed stormwater system; shading function; and large woody debris recruitment. Ultimately, the Fish Habitat Memorandum determined that, considering “the limited potential of the Tributary’s buffer,” “the retained native WSDOT plantings that will provide shade and habitat function,” and other mitigating factors, including the enhanced stormwater treatment that would be provided, the proposal would “have no significant, direct or indirect, adverse impact to environmental functions provided by the Tributary and its riparian buffer.” *Exhibit C-1.d.*
8. The Watershed Company provided an additional memorandum, dated September 26, 2019, reviewing the Fish Habitat Memorandum. In it, The Watershed Company concurred with the Applicant’s assessment that the Tributary would not be regulated as a stream under IMC 18.10.390; agreed that the Tributary “provides off-channel fish habitat, important for rearing salmonids and as refuge during high-flow events;” and provided an analysis of existing scientific literature related to pollutants, shading, large woody debris recruitment, and the relationship between fish and macroinvertebrates. Ultimately, The Watershed Company determined:

Given existing conditions, water quality functions and shading for temperature are the two primary functions that must be protected to

maintain the [Tributary] as viable off-channel rearing and refuge habitat (primarily during the winter and early spring) and avoid downstream impacts to [the North Fork] (such as increased temperature from summer flow events).

Since the stormwater system will be releasing water that has undergone enhanced treatment into a gently-sloped vegetated 'buffer,' the narrower width proposed is expected to have a negligible impact [on] existing water quality conditions in the ditch tributary. A negligible impact is barely measurable with no perceptible consequences. This statement presumes dense planting with native trees and shrubs . . . and the addition of groundcovers would also be beneficial.

Presently, shading along the [Tributary] is provided by WSDOT plantings and existing vegetation. Much of the on-site area adjacent to the ditch is emergent weeds and grasses. . . Given existing degraded on-site conditions and the proposed +/- 6.5 foot planting strip along the south property line, the site development is expected to have a minor impact on ditch tributary shading. A minor impact would result in a detectable change, but the change would be localized and small. To ensure the impact is minor, we recommend including native trees in the on-site planting area [adjacent to the Tributary]. As noted for water quality, dense planting with native trees and shrubs is recommended.

*Exhibit C-1.e; SDP 0745 – 0754.*

#### SEPA Review

9. The City acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), chapter 43.21C Revised Code of Washington RCW (RCW). Initially, the City issued a proposed Mitigated Determination of Nonsignificance (MDNS) on April 26, 2019, with a comment deadline of May 9, 2019. The proposed MDNS included findings of fact that addressed the CAS, as well as the review memoranda prepared by The Watershed Company (up to that point). It noted that, while the North Fork is a Class 2 fish-bearing stream, the Tributary "is located off the project site and is unregulated by the City of Issaquah." The proposed MDNS included seven mitigation measures designed to ensure the proposal would not have a probable, significant adverse impact on the environment. These included measures related to protection of the North Fork, and to further stormwater review and analysis, and required revisions to and implementation of the Applicant's proposed mitigation plan (put forth in the CAS). *SDP 0224 – 02271.*
10. At the conclusion of the comment period associated with the proposed MDNS, the City conducted further review of the proposal, including review of the following: comments

*Findings, Conclusions, and Decision  
City of Issaquah Hearing Examiner  
Issaquah Environmental Council SDP Appeal  
No. SDP 19-00001*

submitted by the Muckleshoot Tribe concerning the Tributary and the use of it by juvenile salmonids; the Applicant's Revised CAS; notes from the Rivers and Streams Board meetings, especially on June 4, 2019; updated project plans submitted on July 12, 2019, incorporating greater detail on stormwater management and proposed landscaping; the additional third-party review memorandum prepared by The Watershed Company (dated June 4, 2019) assessing the Revised CAS; and additional project analysis by City staff, including a detailed staff memorandum on SEPA. After reviewing this information, along with the Applicant's environmental checklist, the City determined that, with mitigation, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued an MDNS on August 14, 2019, with an appeal deadline of September 4, 2019. Required mitigation included measures related to protection of the North Fork and the Tributary, a requirement related to further stormwater review and analysis, and implementation of the Applicant's proposed mitigation plan (from the Revised CAS). *SDP 0224 – 02271*.

11. On August 22, 2019, prior to expiration of the appeal deadline, the City withdrew its SEPA determination, in light of the remand required by the Commission. Following this, the City allowed for additional comments to be submitted, under SEPA, and received and reviewed additional information, including the following: the Water Source Memorandum; the Fish Habitat Memorandum; The Watershed Company's memorandum reviewing the Fish Habitat Memorandum; a memorandum prepared by City staff, dated September 26, 2019, responding to the Commission's remand request; an additional memorandum prepared by City staff, dated October 2, 2019, specifically analyzing the project for review under SEPA; additional public comments received at a final meeting of the Rivers and Streams Board on October 1, 2019; and dozens of written comments submitted to the Rivers and Streams Board, the Commission, and the City. *Exhibit C-1*.
12. On October 2, 2019, the City again determined that, with mitigation, the proposal would not have probable, significant adverse environmental impacts and issued a Revised MDNS for the proposal. Factual findings in the Revised MDNS note: comments from the Muckleshoot Tribe and information prepared by WSDOT indicate that the Tributary is known to contain juvenile salmonids and provides habitat suitable for "forage and rest" for salmonids; the Applicant provided documentation showing the project would not have significant adverse impacts to water quality or shading as it pertains to existing salmon habitat in the Tributary; existing off-site vegetated areas along the Tributary provide water quality, shading, and large woody debris habitat functions; additional on-site vegetated areas provide shading and protect water quality; wildlife habitat along the North Fork would be improved through buffer enhancement; proper location, design, construction and maintenance of the project's storm drainage facilities is necessary to ensure the protection of water and stream quality; and mitigation measures are necessary to prevent human intrusion and disturbance to the North Fork and Tributary. *Exhibit C-1*.

13. The MDNS included required mitigation measures, including: measures related to the enhancement and protection of the North Fork and the Tributary, including a requirement that the stream and buffer area be “encumbered by a public open space, conversion easement granted to the City of Issaquah, or other open space protection mechanism”; a requirement that any stormwater discharges and/or structures within or draining to critical areas be shown on stormwater plans and quantified and mitigated; and implementation of required mitigation related to reduction of the stream buffer associated with the North Fork (as detailed in the Revised CAS). Of particular note, Condition 1 of the MDNS states:

The purpose and intent of the following conditions are to minimize project-related significant adverse environmental impacts to the adjacent drainage ditch, south of the project site located in the Washington State Department of Transportation (WSDOT) right of way. A portion of the ditch has been designed by WSDOT to provide forage and rest habitat for salmonids entering from the North Fork of Issaquah Creek:

- i. Adjacent on-site planting areas shall be planted with a mixture of native shrubs and trees in order to provide shading and natural water filtration, and groundcover to provide a more structurally complex habitat. If possible, the applicant is encouraged to also add native plants, shrubs, and groundcover in off-site areas adjacent to the ditch owned by WSDOT. Plant densities shall be a minimum of nine feet on center for trees and five feet on center for shrubs. Planting densities are intended to provide a total number of plants per area – plants should be placed in random, naturalized clusters. Vine maples are considered a shrub and not a tree, so an alternative native tree species must be selected and approved by the City’s consultant during Landscape permit review.
- ii. In order to discourage the intrusion of people or animals, the applicant shall install a 4-foot high split rail wooden fencing along the property line adjacent to the ditch. To prevent vehicle intrusion, wheel stops or similar mechanisms preventing vehicle overhang, shall be installed at the edge of the display areas along the site perimeter near the ditch. These features must be shown on the applicant’s Site Work permit.
- iii. Temporary erosion and sediment control (TESC) measures shall be required for this site according to City codes and standards; however, as an extra precaution to mitigate the proximity of construction activities to fish habitat, a double silt fence shall be installed adjacent to the North Fork of Issaquah Creek and the off-

site ditch. The location and extent of the fence will be determined with city staff during the Site Work permit review.

*Exhibit C-1.*

14. The Revised MDNS also noted that a 14-day appeal period would end on October 16, 2019, that the MDNS was being issued in association with the Commission's decision on the SDP permit, and that "all appeals shall be combined with an appeal of that permit decision, pursuant to IMC 18.04.250." *Exhibit C-1.*

#### SDP Decision

15. On the same date the Revised MDNS was issued, the Commission concluded its public meeting on the SDP application, granting project approval. On October 9, 2019, the Commission issued its decision. The decision notes that the Commission reviewed the same information City staff reviewed prior to issuing the Revised MDNS (detailed above), including all submitted technical reports and public comments. The Commission decision included approximately 20 conditions that must be adhered to, including compliance with the MDNS mitigation measures and conditions related to tree protection/replacement, landscaping, project timing, the installation of wheel stops adjacent to buffer areas, and design requirements.<sup>4</sup> The decision stated that a closed record appeal of the decision would be possible and provided for an appeal deadline of October 23, 2019. *SDP 0984 – 0998.*

#### SDP Appeal

16. The City received IEC's appeal of the SDP, dated October 23, 2019. In it, the Appellant alleges the following: the Tributary to the North Fork of Issaquah Creek is a regulated F water body, not a fish-bearing ditch; an advisory map from 1996 was used to determine the Tributary may be considered a ditch, and updated information is needed; mitigation sequencing was not followed; tree retention requirements (CIDDS 10.13) were improperly applied; consultant reports erroneously state there are no fish in the Tributary; limits for allowing buffer reduction to the North Fork of Issaquah Creek were not properly calculated; the quantity of re-vegetation required for the reduced buffer does not "demonstratively improve water quality and habitat function"; and the River & Streams Board meeting removed "a voice from the board" that potentially changed the information coming out of that meeting. *Notice of Appeal (Site Development Permit), dated October 23, 2019.*
17. The City transmitted the appeal to the Hearing Examiner and, on October 24, 2019, the Hearing Examiner issued a pre-hearing order setting the SDP appeal hearing for November 19, 2019, and allowing for the submission of pre-hearing motions and briefs.

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<sup>4</sup> The Commission decision includes 35 numbered conditions. Several of these, however, are denoted "[Deleted by staff]." *Exhibit C-5.*



The parties agreed to a revised hearing date and, accordingly, a revised pre-hearing order was issued on October 30, 2019, setting the hearing for December 9, 2019. *Hearing Examiner's Pre-Hearing Order, dated October 24, 2019; Revised Pre-Hearing Order, dated October 30, 2019.*

#### Motions and Briefs

18. Following issuance of the revised pre-hearing order, the Hearing Examiner received several motions, including cross-motions for summary judgment from the Appellant and Applicant on the issue of classifying the Tributary as a stream or a ditch, as well as several motions related to the appeal of the MDNS.<sup>5</sup> In a third revised pre-hearing order, issued November 21, 2019, the Hearing Examiner noted that responses to the dispositive motions would be due by November 25, 2019, as was previously detailed in the second revised pre-hearing order. The Hearing Examiner also noted that, unfortunately, his initial pre-hearing orders mistakenly stated that the consolidated hearing would involve an open record as to both the SEPA appeal and SDP appeal. The Hearing Examiner explained that, as required by IMC 18.04.250(E) and RCW 36.70B.060(6), the portion of the hearing related to the SDP appeal would be on a closed record. In a fourth revised pre-hearing order, also issued on November 21, 2019, the Hearing Examiner noted that the appeal hearing would begin earlier than originally scheduled, at the request of the parties. The parties submitted several additional motions and, on November 29, 2019, the Hearing Examiner issued a fifth revised pre-hearing order. This order clarified that the Hearing Examiner would begin by hearing oral argument on any dispositive motions at the outset of the hearing; followed by hearing the SEPA appeal as an open record hearing, with exhibits, witnesses, and testimony; and concluding with the SDP appeal hearing proceeding, with argument on the closed record. The Appellant continued to submit motions and, on December 5, 2019, the Hearing Examiner issued a "Response to Appellant's Motion for Clarification," in which procedural matters were clarified, and the Hearing Examiner stressed that no further motions would be considered. *See Attachment A.*
19. The Applicant timely submitted a pre-hearing brief, in which it responded to the Appellant's SDP appeal issues as follows:
  - The definitions section of the critical areas code, IMC 18.10.390, especially the definition of "stream," supports the classification of the unnamed Tributary as a ditch.<sup>6</sup>
  - The City properly relied on the 1996 advisory map in determining that the unnamed Tributary is a ditch; the Appellant lacks any legal basis to challenge the City's reliance on its resource map.

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<sup>5</sup> These motions are separately addressed in the companion decision on the SEPA appeal.

<sup>6</sup> The Appellant and Applicant submitted cross-motions for summary judgment on this issue. Because the Hearing Examiner addresses this issue as part of the SDP conclusions, a separate analysis is unnecessary.

- The record demonstrates that mitigation sequencing was followed regarding the North Fork of Issaquah Creek and its buffer and that no mitigation sequencing was required for the Tributary, classified as a ditch, because it is not a critical area.
- The Applicant fully complied with tree retention requirements under the municipal code and the Central Issaquah Development and Design Standards.
- Whether consultant reports erroneously state there are no fish in the Tributary is irrelevant because the City did not rely on the consultant reports' determination that the Tributary lacked fish when issuing the SDP. In addition, all parties accept the fact that fish forage and rest in the Tributary.
- The buffer reduction permitted by the City is expressly allowed under IMC 18.10.790. Nothing in the critical areas ordinances required the City to subtract from the allotted buffer reduction the amount of reduced buffer on the opposite side of the Creek, on property not owned/controlled by the Applicant.
- The Appellant's contention that the quantity of revegetation required for the reduced buffer does not "demonstratively improve water quality and habitat function" is belied by the final Critical Areas Study.
- A member of the Rivers & Streams Board voluntarily recused herself from participating as a board member addressing the proposal because of her membership with IEC, the member participated in her capacity as a member of the public, and, even assuming that the member was improperly removed, the Board acts only in an advisory capacity with no binding decision-making authority over the SDP.

*Applicant's Brief, pages 9 through 15, dated November 25, 2019.*

20. The City submitted a pre-hearing brief, in which the City responded to the Appellant's SDP appeal issues as follows:
- The Washington State Department of Fish and Wildlife's classification of the unnamed Tributary as a regulated F water body does not control its classification for purposes of the Tributary's critical areas treatment under the City's critical areas regulations.
  - The 1996 Issaquah Creek Final Basin and Nonpoint Action Plan is not merely advisory, it is the legislatively adopted standard for distinguishing streams from other artificial water courses. The definition for "ditch" in IMC 18.10.390, for instance, states that a ditch is a "long, narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996)."
  - Mitigation sequencing was followed for the North Fork of the Issaquah Creek. Mitigation sequencing is not required for the unnamed Tributary because it is not a regulated critical area.

- The City it is not aware of any reports stating that there are no fish in the unnamed Tributary. It relied on several expert reports that addressed the presence of fish in the Tributary during review of the proposal.
- The plain language of the critical areas definitions makes clear that each side of a buffer is to be considered in isolation when applying dimensional requirements, that it would be unfair to calculate a property owner's buffer status against a different property owner's eligibility for buffer reduction, and it is impracticable to require the City to track the precise contours of a buffer that is not on a subject property to evaluate an applicant's request for a buffer reduction. The City correctly determined that the Applicant would be allowed to reduce the buffer on the North Fork in compliance with the municipal code.
- In response to the Appellant's contention that the quantity of revegetation required for the reduced buffer does not "demonstratively improve water quality and habitat function," the City argues that the provision of IMC 18.10.790(D)(4) that the Appellant relies on is merely a purpose statement without binding effect. Alternatively, the City argues that the expert reports it considered when issuing the SDP demonstrate that the proposal would improve water quality and habitat functions.
- A member of the Rivers & Streams Board voluntarily recused herself from acting in her board capacity because of her membership with IEC but still was allowed to participate in the meeting in her capacity as a member of the public.

*City of Issaquah's Pre-Hearing Brief, pages 9 through 12, dated November 25, 2019.*

21. The Appellant did not submit an opening brief. It did, however, submit a pre-hearing response brief, in which it argued:
- The unnamed Tributary qualifies as a critical area under IMC 18.10.390 regardless of whether it is classified as a stream.
  - The City was required to look beyond the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining whether the unnamed Tributary was a critical area.
  - The record does not support the Applicant's claim that it took every possible step in reducing the project's footprint to allow for greater protection of the North Fork of Issaquah Creek and the unnamed Tributary.
  - The project was not entitled to a modification of the tree retention requirements because the permit approval documents do not include a finding that all necessary criteria for modification were met and because the record demonstrates that less than 25 percent of the total caliper of all significant trees will be preserved even when accounting for groupings of smaller trees.
  - The City failed to account for an existing reduced buffer on the opposite side of the North Fork of Issaquah Creek when permitting a reduced buffer on the subject property's side of the Creek.

- The quantity of re-vegetation required for the reduced buffer does not demonstratively improve water quality and habitat function because the City assumed the Applicant could receive WSDOT permission to enhance the buffer on WSDOT's side of the North Fork of Issaquah Creek.

*Appellant's Pre-Hearing Response Brief, pages 8 through 18, dated December 3, 2019.*

#### Closed Record Appeal Hearing

22. In light of time constraints, the parties agreed at the closed record SDP hearing to waive oral argument in lieu of submitting written briefing. At the conclusion of the closed record SDP hearing, the Hearing Examiner ruled that the Applicant and the City could submit briefs in response to the issues detailed in the Appellant's December 3, 2019, pre-hearing response brief, including: that the City incorrectly relied on a 1996 Map to exclude the Tributary from the CAO definition of a "stream"; the record lacks adequate support for the City's assertion that it complied with mitigation sequencing requirements; the City improperly applied the tree retention requirements of CIDDS 10.13; the limits for allowing buffer reductions to the North Fork of Issaquah Creek were not properly calculated consistent with IMC 18.10.790(D)(1); and the limits for allowing buffer reductions to the North Fork of Issaquah Creek were not properly calculated as required by IMC 18.10.790(D)(4). The Hearing Examiner also ruled that the Appellant could file a brief in reply to the Applicant's and City's response briefs. *Oral Ruling of the Hearing Examiner.*
23. The Applicant filed a post-hearing brief, in which it argued:
  - The City was not required to look beyond the 1996 Issaquah Creek Final Basin Plan map to determine whether the unnamed Tributary was a stream or a ditch because IMC 18.10.390 expressly cites the map as a resource for determining whether a body of water fits within the definition of a ditch. Additionally, IMC 18.10.390's definition of a ditch does not reference the definition of critical areas and the City reliance on the 1996 map does not change the fact that the Tributary meets the definition of a ditch because it is supplied by water from entirely artificial sources.
  - Mitigation sequencing for the unnamed Tributary was not required because it is not a critical area. Mitigation sequencing for Issaquah Creek and its buffer was followed, and the Applicant and the City worked together to attempt to reduce the project's footprint.
  - The City complied with Criterion 6 of the tree retention modification requirements under CIDDS 10.13.B by including as an express condition of the SDP that the Applicant plant 110 trees or make payment to the tree fund in lieu of providing replacement trees. The City is not required to make an express finding that the Applicant has paid into the tree fund prior to issuing an SDP. The City also complied with Criterion 2 because there are only 4 or 5 small trees scattered

on the site, which do not constitute a “grouping,” rendering this Criterion inapplicable.

- The Appellant cannot meet its burden to show that the Applicant’s proposed buffer reduction exceeds the 25 percent permitted by Code.
- A Critical Areas Study addressing the project’s impact on the North Fork of Issaquah Creek concluded that the proposal would improve water quality, hydraulic function, and habitat function. Whether or not the Applicant will obtain permission from WSDOT to plant on WSDOT property does not change the project’s substantial improvement to the Creek and, thus, the buffer reduction was proper.

*Applicant’s SDP Response Brief, dated December 19, 2019.*

24. The City filed a response brief, in which it argued:

- IMC 18.10.390 required the City to utilize the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining whether the unnamed Tributary should be classified as a ditch because the map is formally incorporated into the definition of “ditch.”
- Mitigation sequencing was not required for the unnamed Tributary because it is not a critical area, and the City and Applicant followed mitigation sequencing for the Creek and its buffer. The City is not required to independently assess the Applicant’s assertion that it would not be feasible to further minimize the project footprint because City staff’s scope of review does not include a full financial audit and analysis of a project’s viability at various footprint sizes.
- The City properly applied the tree retention requirement of Chapter 10.13 CIDDS. CIDDS 10.13.B.2 does not require the Applicant to retain smaller trees such that the total caliper inches of retained small trees total 25% of the total caliper of significant trees on the site. The few healthy non-significant trees on the site are not in “groupings” and, thus, are not eligible for alternate retention under CIDDS 10.13.B.2. Additionally, the Development Commission determined that the Applicant could make up for deficits in tree retention through tree replacement, with specifics to be worked out during the landscape planning phase.
- The Appellant cannot meet its burden to show that the Applicant’s proposed buffer reduction exceeds the 25 percent permitted by the municipal code.
- The Hearing Examiner should not consider the Appellant’s argument regarding a critical area study requirement for a buffer reduction under IMC 18.10.790(D)(4)(c) because the Appellant did not raise this issue in its written appeal statement. The City notes that the Appellant’s appeal statement challenged the *quantity* of revegetation required for the reduced buffer as not being sufficient to demonstrate that the project would improve water quality and habitat functions, citing only to IMC 18.10.790(D)(4)(a). The City further contends that the Appellant’s argument fails on its merits because the Applicant’s May 16, 2019, critical areas study demonstrates that the proposed enhancements to vegetation

would improve water quality and habitat function. The City also asserts that the Appellant's argument that it should have required planting on WSDOT property must be rejected because the City does not have authority to impose this as a mandatory condition.

*City of Issaquah's SDP Response Brief, dated December 29, 2019.*

25. The Appellant filed a reply brief, in which it argued:
- The City erred by relying on an outdated 1996 map when classifying the unnamed Tributary as a ditch and should have examined more current materials documenting WSDOT's efforts to restore fish habitat in both the North Fork of Issaquah Creek and the unnamed Tributary.
  - The City made no effort to verify the Applicant's claim that it was not possible to shrink the project's footprint to preserve larger buffers.
  - Under a common sense reading of the tree retention requirements of CIDDS 10.13.B.2, modification cannot be approved if it does not incorporate smaller trees with equivalent total diameters. This interpretation applies regardless of whether the site contains enough smaller trees to meet this criterion. Additionally, the replacement trees decisions required by Chapter 10.14 CIDDS should have been made part of the permit decision and not implemented at a later stage of development.
  - There are no findings supporting the Development Commission's determination that the Applicant's proposed buffer reduction does not exceed the 25 percent permitted by the municipal code. Alternatively, even if no findings were required, the City and Applicant have failed to perform the necessary calculation to ensure that the proposed buffer reduction does not exceed the 25 percent permitted by code.
  - Although the Development Commission found that the project, as conditioned, provided sufficient buffer enhancement to mitigate the buffer reduction, it did so prior to omitting a condition requiring buffer enhancements on WSDOT property. Because the omission of the required buffer enhancements on WSDOT property constituted a significant reduction to the area of buffer enhancements, the Development Commission's decision does not accurately reflect the Development's Commission members' votes and must be vacated for improper procedure, lack of substantial evidence in support of facts, and errors of law. Additionally, the adopted mitigation measures are not based on an approved Critical Areas Study.

*Appellant's SDP Reply Brief, dated December 30, 2019.*

## **CONCLUSIONS**

### **Jurisdiction**

The Hearing Examiner has jurisdiction to make final decisions on appeals from decisions of the City's Development Commission. *IMC 18.03.060(D)*. Such appeals are closed record appeals,

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and the Hearing Examiner is limited to review of the evidence submitted at the open record appeal hearing before the Development Commission. *IMC 18.04.250(E)*.

#### Review Authority

The Hearing Examiner's duty is to review the entire record before him to determine whether an appellant has met his or her burden of proving that the City's decision was erroneous. Specifically, *IMC 1.32.020(E)* requires the Hearing Examiner to "affirm the decision unless from a review of the record it is determined the decision being appealed was clearly erroneous." To properly review the City's action, the Hearing Examiner must decide what facts are important to make a decision, determine those facts with reference to specific exhibits or testimony, draw conclusions from those facts, and make a decision based on those conclusions. *See Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994).

#### SDP Appeal Issues to Be Decided

The Hearing Examiner must carefully consider the scope of the appeal when making findings and conclusions to support any decision made in response to an appeal. Those issues identified in an appeal statement that are not pursued during the course of an appeal will be deemed abandoned by the Appellant and not considered further by the Hearing Examiner. *See, e.g., Seattle First-Nat'l Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 243, 588 P.2d 1308 (1978). A "party abandons an issue by failing to pursue it on appeal by (1) failing to brief the issue or (2) explicitly abandoning the issue at oral argument." *Holder v. City of Vancouver*, 136 Wn. App. 104, 147 P.3d 641 (2006). Moreover, the Hearing Examiner does not consider issues that are inadequately argued or given only passing treatment on appeal. *See, e.g., State v. Elliot*, 114 Wn.2d 6, 15, 786 P.2d 440 (1990).

In this appeal, the Appellant initially listed eight issues in its notice of appeal. The Appellant, however, has not provided any briefing addressing its claims on appeal that (1) consultant report erroneously stated there are no fish in the unnamed Tributary and (2) a voice was improperly removed from the Rivers & Streams Board that potentially changed the information coming out of that meeting. Accordingly, those issues are deemed abandoned and will not be addressed in this decision. The remaining appeal issues to be decided are as follows:

- (1) Whether the CDC properly found that the unnamed Tributary meets the definition of a "ditch" under *IMC 18.10.390* and that Tributary's classification as a ditch excludes it from critical areas regulations under Chapter 18.10 *IMC*.
- (2) Whether the City properly utilized the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining that the unnamed Tributary should be classified as a ditch.
- (3) Whether the City complied with mitigation sequencing required under City Code.
- (4) Whether the CDC properly applied tree retention modification requirements of *CIDDS 10.13.B*.

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- (5) Whether the proposed buffer reduction along the North Fork of Issaquah Creek complies with City code.
- (6) Whether proposed buffer enhancements are sufficient to mitigate impacts to the North Fork of Issaquah Creek so as to justify the buffer reduction.

#### Conclusions Based on Findings

1. **The Commission properly determined that the unnamed Tributary is a ditch as defined in IMC 18.10.390 and that this classification dictates that the Tributary is not subject to critical areas regulations.** Under Chapter 18.10 IMC, “critical areas” are subject to additional environmental controls. IMC 18.10.390 defines *critical areas* as:

Any of those areas which are subject to natural hazards or those land features which support unique, fragile, or valuable natural resources including fish, wildlife and other organisms and their habitat and such resources which, in their natural state, carry, hold or purify water. *Critical areas include the following landform features:* erosion hazard areas, flood hazard areas, coal mine hazard areas, landslide hazard areas, seismic hazard areas, steep slope areas, *streams*, wetlands, and aquifer recharge areas. Critical area buffers are integral to the health of the critical area and therefore for functional purposes are considered a part of the critical area. However, unless indicated otherwise, measurements from critical areas are made from the outside edge of the protected landform feature (e.g., wetland, stream, etc.) and not from the outside edge of the buffer.<sup>7</sup>

Because this provision contains an exhaustive list of landform features included within the critical areas definition, landform features not included within the list are excluded from the definition of a critical area and are not subject to critical areas regulations. IMC 18.10.390’s definition of “streams,” a landform feature included within the critical areas definition, explicitly excludes “excavated or other entirely artificial watercourses, including irrigation ditches, swales, roadside ditches, canals, storm or surface water runoff devices.” In turn, IMC 18.10.390 defines “ditch” as “[a] long, narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996).” Accordingly, landform features appropriately classified as a ditch are not critical areas subject to critical areas regulations.

In addition, in finding that that the Tributary is a ditch under the municipal code, the Commission reviewed a September 19, 2019, report submitted by the Applicant’s consultants that concluded no natural sources provided water to the Tributary. The

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<sup>7</sup> Emphasis added.



Appellant has not identified any evidence in the record before the CDC disputing this conclusion.<sup>8</sup>

The Applicant and Appellant filed cross-motions for summary judgment on the issue of whether the unnamed Tributary at issue was properly classified as a ditch and, if so, whether the Tributary is therefore excluded from critical areas regulations. A party is entitled to summary judgment if, when viewing the facts in the light most favorable to the nonmoving party, no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. *See e.g., Camicia v. Howard S. Wright Contr. Co.*, 179 Wn.2d 684, 317 P.3d 987 (2014).

Because the uncontroverted evidence in the record establishes that no natural sources provide water to the Tributary, the Applicant is entitled to summary judgment on the issue of whether the Commission properly classified the Tributary as a ditch. And because the proper classification of a landform feature as a “ditch” excludes the landform feature from critical areas regulations as a matter of law, the Applicant is entitled to summary judgment on the issue of whether the Tributary was properly excluded from critical areas regulations. Conversely, the Appellant’s summary judgment motion arguing the contrary is denied. *Findings 1, 2, 6 – 8, 15 – 25.*

2. **The Commission properly utilized the 1996 Issaquah Creek Final Basin and Nonpoint Action Plan map when determining that the unnamed Tributary should be classified as a ditch.** IMC 18.10.390 defines *ditch* as “[a] long narrow human-built excavation that conveys storm water, agricultural runoff or irrigation water *that is not identified as a classified or unclassified stream in the Issaquah Creek Final Basin and Nonpoint Action Plan (1996)*” (emphasis added). The Appellant concedes that the 1996 map referenced in the stream definition does not identify the Tributary at issue as a stream. *Appellant’s Pre-Hearing Response Brief, page 13, dated December 3, 2019.* The Appellant argues, instead, that the City was required to look at additional resource material to determine whether the Tributary should be classified as a stream because the 1996 map is outdated. This argument fails because IMC 18.10.390 specifically references only the 1996 map in its definition of “ditch.” *Findings 1, 2, 6 – 8, 15 – 25.*
3. **The Commission correctly determined that the Applicant complied with required mitigation sequencing under IMC 18.10.490.** Under IMC 18.10.490, sequential mitigation measures must be followed for development on sites containing critical areas to further the goal of no net loss of ecological functions of environmental critical areas.

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<sup>8</sup> The Appellant relies on declarations outside the SDP record to argue that there is evidence that natural water sources contribute to the flow in the tributary. *Appellant’s Response to Applicant’s Summary Judgment Motion, pages 2 and 3, dated November 25, 2019.* Because this is a closed record appeal, the Hearing Examiner does not consider these declarations in resolving this appeal or the cross-motions for summary judgment on this issue.

The Appellant argues that the City failed to meet this requirement because it did not independently assess whether the Applicant's proposed project footprint could be reduced to avoid impacts to the Tributary and the North Fork of Issaquah Creek. As discussed above, the Tributary is not a critical area and, thus, mitigation sequencing was not required with respect to the Tributary. Regarding mitigation sequencing applicable to Issaquah Creek, the Applicant asserted that it was not feasible to further reduce its project footprint to provide a greater buffer to the Creek due to program requirements for site circulation, building size, and requirements for customer and display parking. The Appellant argues the City erred by doing "nothing to verify the applicant's claims," but the Appellant does not explain what more the City was required to do and does not provide any legal authority supporting its argument that the City was required to independently assess the Applicant's assertion that it was not financially or logistically feasible to reduce the project footprint. *Applicant's SDP Reply Brief, page 2, dated December 30, 2019*. Accordingly, the Appellant fails to demonstrate that the City erred by failing to comply with mitigation sequencing. *Findings 1 – 25*.

**4. The Commission properly applied the tree retention modification requirements of CIDDs 10.13.B.** CIDDs 10.13.B allows for a reduction of tree retention requirements if, as applicable here, the following criteria "*are met*:"

1. The modification is consistent with the purpose and intent of this Chapter, and the Central Issaquah Plan goals and policies.
2. The modification incorporates the retention of a grouping(s) of smaller trees that makes up the equivalent diameter inches and retains other natural vegetation occurring in association with the smaller tree grouping(s).
3. The modification is necessary because the size, shape, topography, location of the subject property may jeopardize the reasonable use of the property and reasonable alternatives do not exist.
4. The modification is necessary because the proposed buildings and site layout, required ingress/egress, existing and proposed utility locations, trails, storm drainage improvements or similar constraints may jeopardize the reasonable use of the property and reasonable alternative that are consistent with the Central Issaquah Plan do not exist.

(Emphasis added).

Additionally, in all modifications, the following criterion (Criterion 6) "*is required to be met*: . . . The applicant replaces trees on site and/or off-site or pays a fee in-lieu-of in accordance with 10.14.C-D Replacement Trees for reductions less than the minimum tree density requirement." CIDDs 10.13.B.6 (emphasis added).

The Appellant first argues that the Commission's findings were insufficient to permit the tree retention modification because it did not specifically find that Criterion 6 had been met. This argument overlooks language distinguishing Criterion 6 from Criteria 1 through 4. In contrast to the requirement that Criteria 1 through 4 "are met," criterion 6 must be "required to be met." *CIDDS 10.13.B*. This difference in language makes sense in light of Criterion 6's reference to a future event. Here, the Commission found that Criteria 1 through 4 have been met and that the proposal, with conditions, would comply with the modification to tree retention requirements. And the Commission included as a condition that the Applicant "shall plant 110 trees measuring a minimum of 2" caliper on site or in an approved off-site location, or else make a payment into the tree fund in lieu of providing replacement trees," satisfying Criterion 6. Because *CIDDS 10.13.B* does not require a finding that the Applicant has met Criterion 6, and because the Commission imposed a condition requiring Criterion 6 to be met, the Appellant cannot show error on this basis.

The Appellant also argues that the CDC lacked evidence supporting its finding that the Applicant's proposal met Criterion 2. Specifically, the Appellant argues that, to be eligible for a tree retention modification, Criterion 2 required the Applicant to retain smaller trees on site such that their total caliper was equivalent to 25 percent of the total caliper of all significant trees on the site. Both the City and the Applicant point out that this interpretation of Criterion 2 is both infeasible under the present circumstances in light of the dearth of small trees on-site and would lead to absurd results. The Hearing Examiner concurs with the City and the Applicant's assessment of this criterion.  
*Findings 1 – 3, 15 – 25.*

5. **The Commission properly determined that, with conditions, the Applicant's proposed 25 percent buffer reduction along the North Fork of Issaquah Creek would comply with IMC 18.10.790(D).** Issaquah Creek is a Class 2 stream used by salmonids, which normally requires a 100-foot buffer under IMC 18.10.785(C)(2). Under IMC 18.10.790(D)(4), however, buffer reduction provisions may be used (separately or together) provided that the "cumulative, total stream buffer reduction shall not exceed twenty-five (25) percent of the required stream buffer" *or* "encroach into the buffer at any location by more than twenty-five percent of the standard stream buffer width." City staff reviewed the Applicant's proposed reduced buffer reduction and determined that it would comply with IMC 18.10.790(D). The Appellant does not appear to contend that the proposed buffer reduction would encroach into the buffer at any location by more than the 25 feet permitted, but appears to argue that the City failed to calculate whether the total area of the buffer reduction would exceed the 25 percent allowed under IMC 18.10.790(D). This matter is solved by simple mathematics. The Appellant requested that the stream buffer associated with the North Fork be reduced by 25 percent (to 75 feet) along the entirety of the critical area. By default, this would result

in precisely 25 percent of the buffer being reduced. If the Appellant believed that a different calculation was appropriate, it had the burden of supplying it. *Findings 1 – 25.*

6. **The Commission did not err in determining that, with conditions, the Applicant’s proposed buffer enhancements would be sufficient to mitigate impacts to the North Fork of Issaquah Creek so as to justify a buffer reduction under IMC 18.10.790.** Substantial evidence in the record, including the Revised Critical Areas Study, showed that the proposal would appropriately mitigate impacts to the North Fork and would result in functional lift to water quality, hydrologic function, and habitat function for the North Fork. The Appellant failed to submit evidence contradicting this. Moreover, while the Appellant contends that the City should have required the Applicant to plant additional vegetation in the WSDOT right-of-way as a permit condition—an issue it raised for the first time in its response brief—the City lacks authority to require this. The Applicant has complied with the vegetation enhancement provisions of the municipal code. *Findings 1 – 25.*

### DECISION

Because substantial evidence supports the Commission’s decision to issue an SDP for the proposal, the appeal is **DENIED**.

DECIDED this 2<sup>nd</sup> day of March 2019.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center

## **Attachment A**

### Exhibits:

The parties agreed to designate the entire SDP record before the Development Commission as exhibits for the SDP appeal, which were indexed as follows:

1. City Staff Report, dated December 6, 2019 [not considered]
2. Development Commission Minutes, dated May 1, 2019 (at SDP 0001)
3. Development Commission Agenda Packet, dated May 1, 2019 (at SDP 0008)
4. Development Commission Staff Presentation, dated May 1, 2019 (at SDP 0181)
5. Development Commission Minutes, dated August 21, 2019 (at SDP 0219)
6. Development Commission Agenda Packet, dated August 21, 2019 (at SDP 0220)
7. Development Commission Staff Presentation, dated August 21, 2019 (at SDP 0342)
8. Development Commission Minutes, dated September 25, 2019 (at SDP 0371)
9. Development Commission Agenda Packet, dated September 25, 2019 (at SDP 0372)
10. Development Commission Minutes, dated October 2, 2019 (at SDP 0492)
11. Development Commission Agenda Packet, dated October 2, 2019 (at SDP 0501)
12. Development Commission Staff Presentation, dated October 2, 2019 (at SDP 0977)
13. Notice of Decision, dated October 2, 2019 (at SDP 0984)
14. Development Commission Meeting Video, dated May 1, 2019 (submitted electronically)
15. Development Commission Meeting Video, dated August 21, 2019 (submitted electronically)
16. Development Commission Meeting Video, dated September 25, 2019 (submitted electronically)
17. Development Commission Meeting Video, dated October 2, 2019 (submitted electronically)
18. Letter from Connie Marsh to Development Commission, dated August 21, 2019 (at SDP 0999)
19. Letter from Issaquah Environmental Council to Development Commission, dated August 20, 2019 (at SDP 1004)

The parties also agreed to designate the following exhibit admitted in the SEPA MDNS appeal hearing for consideration in this SDP appeal:

- C-1. Revised Mitigated Determination of Nonsignificance, dated October 2, 2019, with the following attachments:
  - a. SEPA Environmental Checklist, submitted March 5, 2019
  - b. Critical Areas Study (Revision 01), dated May 16, 2019
  - c. Tributary Drainage Basin Review, OSG|O'Neill Service Group, dated September 11, 2019

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- d. Evaluation of Impact on Tributary, OSG|O'Neill Service Group, dated September 25, 2019
- e. Environmental Consultation & Peer Review for SEPA, The Watershed Company, dated September 26, 2019
- f. City of Issaquah River & Streams Board minutes, dated March 26, 2019; City of Issaquah River & Streams Board minutes, dated June 4, 2019
- g. Revised SDP Application plan set, SDP Rev "C", dated July 12, 2019

Appeal, Motions, Pleadings, and Orders:

- Notice of SDP Appeal, Issaquah Environmental Council, received October 23, 2019
- Hearing Examiner's Pre-Hearing Order, dated October 24, 2019
- Hearing Examiner's Pre-Hearing Order, (*2<sup>nd</sup> Revised October 30, 2019*)
- Notice of Appearance (David A. Bricklin), dated November 18, 2019
- Issaquah Environmental Council's Motion for Summary Judgment on the issue of the Proper Characterization of the Tributary of the North Fork of Issaquah Creek, dated November 18, 2019; Declaration of William J. Taylor, dated November 15, 2019; Declaration of Connie Marsh, dated November 18, 2019
- Applicant's Motion for Summary Judgment - Site Development (SDP) Appeal, dated November 18, 2019
- Applicant's Motion for Summary Judgment - MDNS Appeal, dated November 18, 2018, [*Withdrawn*]
- Motion to Dismiss Appeals for Lack of Standing, dated November 18, 2019 [*Withdrawn*]
- Hearing Examiner's Pre-Hearing Order (*3<sup>rd</sup> Revised November 21, 2019*)
- Hearing Examiner's Pre-Hearing Order (*4<sup>th</sup> Revised November 21, 2019*)
- Issaquah Environmental Council's Motion to Amend Third Prehearing Order, dated November 22, 2019
- Amended Notice of Appearance (Katherine D. Hambley), dated November 22, 2019,
- City of Issaquah's Pre-Hearing Brief, dated November 25, 2019
- City of Issaquah's Response to Cross-Motions for Summary Judgment and Applicant's Motion to Dismiss, dated November 25, 2019; Declaration of Katherine Hambley in Support of City's Response to Motions, dated November 25, 2019
- Applicant's Response to IEC's Summary Judgment Motion RE: Characterization of Tributary as Part of the Site Development Permit (SDP) Appeal, dated November 25, 2019
- Applicant's Hearing Brief, dated November 25, 2019
- Issaquah Environmental Council's Response to the City's Motion for Summary Judgment – Site Development Permit (SDP), dated November 25, 2019
- Issaquah Environmental Council's Response to Motion for Summary Judgment – MDNS Appeal, dated November 25, 2019
- Issaquah Environmental Council's Opposition to Applicant's Motion to Dismiss for Lack of Standing, dated November 25, 2019; Declaration of John MacDuff on Behalf of

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- Issaquah Environmental Council, dated November 22, 2019; Declaration of Connie Marsh, dated November 22, 2019; Declaration of David Kappler, dated November 22, 2019; Declaration of Janet Wall, dated November 22, 2019; Second Declaration of William J. Taylor, dated November 25, 2019
- Applicant's Response to IEC's Motion to Amend Third Pre-Hearing Order, received November 27, 2019
  - Issaquah Environmental Council's Motion to Strike and Response to Waiver Argument, dated November 27, 2019
  - Stipulation Regarding Designation of SDP Record, dated November 27, 2019
  - Hearing Examiner's Order on Motions and revised Pre-Hearing Order (*5<sup>th</sup> Revised November 29, 2019*)
  - Issaquah Environmental Council's Reply RE Open Record Hearing, dated November 29, 2019
  - Hearing Examiner's Response to Appellant's Request for Reconsideration, dated December 3, 2019
  - Appellant's Witness and Exhibit List, dated December 3, 2019
  - Issaquah Environmental Council's Pre-Hearing Response Brief, dated December 3, 2019
  - Issaquah Environmental Council's Motion for Clarification of Order on Motions and Revised Prehearing Order (November 29, 2019), dated October 4, 2019
  - Appellant's Amended Exhibit List, dated December 4, 2019
  - Hearing Examiner's Response to Appellant's Motion for Clarification, dated December 5, 2019
  - Index to the SDP Record, dated December 16, 2019.
  - Issaquah Environmental Council's Pre-Hearing Response Brief, as amended to include SDP record citations on December 16, 2019
  - City of Issaquah's Response to IEC's Pre-Hearing Response Brief, dated December 19, 2019
  - Applicant's Response Regarding SDP, dated December 19, 2019
  - Applicant's Citations and Objection to Record RE Ditch/Tributary Issues, dated December 19, 2019
  - Issaquah Environmental Council's Response to Applicant's Objections, dated December 30, 2019
  - Issaquah Environmental Council's Reply Brief on Permit Issues, dated December 30, 2019
  - Hearing Examiner's Update on Decision, dated February 21, 2020

